United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

76-7607

United States Court of Appeals
FOR THE SECOND CIRCUIT

7/5

Docket Nos. 76-7607, 76-7619

B

UNIVERSITY HILL FOUNDATION,
Plaintiff-Appellee and Cross-Appellant,

P/S

—against—

GOLDMAN, SACHS & CO.,
Defendant-Appellant and Cross-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(71 CIV. 1166 (MEL))

UNITED STATES COURT OF APPEALS
FILED
JUL 5 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX
VOLUME I
Pages 1-675a

SULLIVAN & CROMWELL
48 Wall Street
New York, New York 10005
(212) 952-8100

Attorneys for Defendant-Appellant and Cross-Appellee

SOLIN & BREINDEL
645 Fifth Avenue
New York, New York 10022
(212) 752-4407

Attorneys for Plaintiff-Appellee and Cross-Appellant

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A. DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

~~[illegible]~~ I ~~[illegible] JUDGE [illegible]~~

JUDGE [illegible]

Jury demand date:

71 CIV. 1166

D. C. Form No. 106 Re

TITLE OF CASE	ATTORNEYS
UNIVERSITY HILL FOUNDATION. AGAINST. GOLDMAN, SACHS & CO. deft and 3rd pty pltff. PENN CENTRAL CO. PENN CENTRAL TRANSPORTATION CO. PENNSYLVANIA CO. STUART T. SAUNDERS DAVID C. BEVAN JONATHAN O'HERRON PEAT, MARWICK, MITCHELL & CO. 3rd pty defts. transferred to Philadelphia under MDL	For plaintiff: Heller, Wetzler REGAN, GOLDFARB ~~POWELL & QUINN~~ + Quinn 445 Park Avenue, N.Y.C.N.Y. 10022 For defendant: Sullivan + Cromwell (Atty for Goldman Sachs)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC	DISB.
J.S. 5 mailed X	Clerk		[illegible]	[illegible]	[illegible]	
			[illegible]	US Treas		[illegible]
J.S. 6 mailed 11-9-76	Marshal					
Basis of Action: VIOL S.E.C. CT 1933&34 $600,000	Docket fee					
	Witness fees					
Action arose at:	Depositions					

IVERSITY HILL FOUNDATION V . GOLDMAN ,SACHS & CO. II

JUDGE LASKER 71 CIV. 116

DATE	PROCEEDINGS	Date Order Judgment N
Mar 12-71	Filed Complaint. Issued Summons.	
Apr.19-71	Filed summons with marshal's ret. Served Goldman Sachs & Co. by Mr. Daty on 3-29-71	
Ap.20-71	Filed third party complaint (Multidistrict Docket No. 56-A).	
Ap.20-71	Filed ANSWER of Goldman,Sachs & Co. to complaint (Multidistrict Docket No. 56-A).	
Ap.12-71	Filed opinion and order of Judicial Panel on Multidistrict Litigation re: pretrial proceedings (Filed in M 19-101 Multidistrict - Docket No. 56).	
May 13-71	Mailed papers (xerox copies) to U.S.D.C., Eastern Dist. of Pennsylvania, Philadelphia, Pa. 19107 pur. to opinion and order of 4/12/71.	
May 27-71	Filed summons with marshal's ret, Served Penn Central Co. C/o Berman & Frost by Mr. DeBarry on 5-10-71	
	Served Penn Central Transportation Co. by Gunther C. Holpp on 4-26-71	
	Served Pennsylvania Co. C/o Pelino Wasserstrom Chucas & Monteverde by Tom P. Monteverde on 5-6-71	
	Served Stuart T. Saunders by Wife on 4-27-71	
	Served David C. Bevan by personally on 5-10-71	
	Served Jonathan O'Herron C/o Duane Morris & Heckscher by Michael Baylson on 5-6-71	
	Served Peat, Marwick Mitchell & Co. by Elizabeth Barton on 4-22-71	
Jun 29-71	Issued additional summons.	
Dec.21-71	Filed Summons with Marshal's ret. Served,	
	Ross E. Traphagen,Jr. by Mrs. Traphagen, on 7-12-71	
	John C. Jamison, by Mrs. Jamison on 7-20-71	
	Michael H. Coles, by Caroline Coles on 7-19-71	
	George T. Boyer, by Mrs. Boyer on 11-26-71	
	Thomas B. Walker, Jr. by on 7-6-71	
	L. Thomas Melly on 7-9-71 by Alice Melly	
	Robert G. Wilson, by Miss Carole on 7-8-71	
	Lewis M. Weston by Mrs. Weston on 7-12-71	
	J. Fred Weintz,Jr. by Mary Wilson, on 7-9-71	
	Alan L. Stein, Unable to serve on 7-26-71	
	Peter A. Hager, by Mrs. Hager, o 7-26-71	
	James P. Gorter, by Suszanne Bebett, on 7-16-71	
	George H. Doty, by Mrs. Doty on 7-7-71	
	Richard J. Fay, by Mr. Harold A. Olson, on 7-7-71	
	James D. Robertson, by Personally on 7-6-71	
	Charles L. Grannon, by Mrs. Grannon, on 7-15-71	
	Howard R. Ypung, on 7-28-71	
	John C. Whitehead, by Dorothy Miller, on 7-26-71	
	John L Weinberg, by Jennifer Pritchard on 7-20-71	
	Stanley R. Miller, by Eva Gamble on 7-8-71	
	James C. Hemphill, on 7-9-71	
	Served Levy,Fowler,Schrader,Saltzman,Altschul,Tenenbaum,Danforth, Krimendahl,Marcus,Menschel,Mnuchin,Weinberg,Peter A. Levy,and Manschel, by delivering copies to Goldman, Sachs & Co. and sending copies by regular mail to defts' residence.	
an 10/74	Filed Copy of order filedx in MDL56A. Ordered that the cases in Schedule A below which were transferred to Chief Judge Edelstein for coordinate PreTrial discovery be remanded to the various transferor judges as indicated in Schedule A, 71 Civ1116, et al. Edelstein Ch. J. (mailed notice) Transferred to Judge Lasker.I	
Feb 9-75	Pretrial Conf held	
Apr.17-74	Filed stip pursuant to rule 15(g) of the rules of procedure of the Judicial panel on multidistrict litigation.	
eb-10-75	PRE-TRIAL CONFERENCE HELD BY Schrieber May.	
eb-13-75	PRE-TRIAL CONFERENCE HELD BY Schrieber May	

CONTINUE ON PAGE #3

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III

DATE	
4-[illegible]-75	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
10-[illegible]-75	Filed Deft's purposed Findings of Facts and Concl of Law.
10-[illegible]-75	Filed Deft's Trial Memo.
11-[illegible]-75	Filed Deft's objection to pltff's deposition designations.
11-[illegible]-75	Filed Deft's Counterdesignations to pltff's deposition designations.
12-09-75	Filed Defts. Counterdesignations responsive to pltffs. add'l deposition Counterdesignations.
12-18-75	Filed Pltffs. objections to defts. deposition counter designations.
2-9-76	Filed Pltffs. Post Brief.
03-23-76	Filed Deft's. post-trial memorandum.
04-13-76	Filed transcript of record of porceedings dated Oct. 28,29,30, 1975.
04-13-76	Filed transcript of record of proceedings dated Oct. 31, Nov. 3,4, 1975.
04-19-76	Filed Pltff's. reply brief.
10-27-76	Filed opinion 45301...the Foundation is entitled to rescind the pruchase and recover the consideration paid for the notes plus interest from the date of the salw. The foregoing constitutes our findings fo fact and conclusion of law. Submit judgment on notice. Lasker J.
11-3-76	Filed affidavit and notice of motion for substitution of attorneys ret. 11-8-76 at 10:00Am.
11-8-76	Filed Correcting affidavit # 45301 Lasker J.
11-9-76	Filed judgment # 76,997 pltff to recover of deft Goldman Sachs the amount of $ 822,049.00 Lasker J. Judgment ent. Clerk. (11-11-76)
11-15-76	Filed memo end. on Motion of 11-3-76. Motion granted So ordered Lasker J. m/n
11-19-76	Filed bill of cost on Judgment # 76,997 in sum of $ 3750.84 in favor of pltff. Entered Clerk (ent. 11-22-76)
1.22.76	Filed stip & order re payment schedule Lasker J.
12-2-76	Filed notice of appeal to the USCA from the judgment ent. on 11-4-76 by J. Lasker m/n
12-16-76	Filed notice of cross appeal to USCA by pltff from Memo opinion dated 10-27-76. m/n
12/3/76	Filed stipulation regarding depositions and witnesses at trial.
10/14/75	Filed plaintiff's post-trial brief
12/30/76	Filed stipulation designating certain exhibits to become part of the record on appeal.
12/30/76	Filed stipulation substituting copies of certain documents for the originals to become part of the record on appeal.

B. TRIAL TRANSCRIPT: TESTIMONY, OCTOBER 28 TO OCTOBER 31, 1975, NOVEMBER 3 TO NOVEMBER 4, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

UNIVERSITY HILL FOUNDATION, :

Plaintiff, :

vs. :

GOLDMAN, SACHS & CO., :

Defendant. :

---------------------------------------x

Before: HON. MORRIS E. LASKER, D.J.

New York, October 28, 1975;
10.00 A.M.

APPEARANCES:

REGAN, GOLDFARB, HELLER, WETZLER & QUINN, ESQS.,
Attorneys for the Plaintiff;
BY: Howard Breindel, Esq.,
Jan Atlas, Esq., and
Robert Aaronson, Esq., of Counsel.

SULLIVAN & CROMWELL, ESQS.,
Attorneys for the Defendant;
BY: Michael M. Maney, Esq.,
Philip L. Graham, Jr., Esq., and
Charles E. Dorkey III, Esq., of Counsel.

- - -

(Case called.)

MR. BREINDEL: Ready, your Honor.

MR. MANEY: The defendant is ready.

THE COURT: Very good.

Gentlemen, I apologize for being late, and I do it not only out of courtesy but to encourage promptness myself. I was unavoidably detained.

I have, during part of the rainy weekend, read briefs from both sides and I have read both memorandum briefly and done my best to acquaint myself with the material submitted at the pretrial conference last spring, so that I have at least one leg on the situation. If there is, however, anything either of you wish to say in the form of an opening statement before we get started with the presentation of evidence, I will be glad to hear it.

MR. MANEY: May I raise the question of housekeeping. If your Honor may recall, there was a brief dispute between the parties as to handling of depositions and after appearing before Magistrate Schreiber Mr. Breindel and I have reached an agreement subject to the Court's approval, which we have reduced to a stipulation which we would like to hand up. This would also, I believe, cure the problem of locating the depositions in the file which there has been some confusion, since this was an MBL case when the cases were spun out of the MBL. It's not entirely clear that the Clerk's Office was able to put a deposition in each of the separate dockets.

THE COURT: The file of this particular case consists only of what I am holding up at the moment. I assume there will be other papers presented somehow or other, and I will leave that to you.

Is there anything special in this stipulation which would require me to scrutinize it?

MR. MANEY: Only that testimony provided in depositions in chief would be offered after the close of live testimony in order to give the parties an opportunity --

THE COURT: What portions you will want to use in light of the live testimony?

MR. MANEY: The plaintiff altered their designations, and in order to give us time to react without doing it before trial --

THE COURT: All right, that is agreeable.

MR. MANEY: May I inquire as to whether the Court plans to sit a half-day this Friday or not at all, or a full day?

THE COURT: It will be half a day. I do expect to sit on Election Day, but I will make arrangements for you at the beginning of the day or at the end of the day if you want to take time off.

Does either of you wish to make opening statements?

MR. BREINDEL: We have agreed to waive opening statements.

THE COURT: We are ready to go, then.

MR. BREINDEL: Mr. LeMay.

NOEL LeMAY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BREINDEL:

Q Mr. Le May, would you give us the address, please?

A 709 North Cordoba, Alhandra, California.

Q Briefly, what is your educational background?

A Schools in Minnesota, high school, business college and special courses in banking.

Q Who is your present employer?

A Union Bank, Los Angeles.

Q How long have you been employed by Union Bank of Los Angeles?

A 23 years.

Q As of March 1, 1970, what was your position with the Union Bank?

A Vice-president, Investment Division.

Q What were your duties for the bank in March of 1970?

A I managed the Investment Division Section that had to do with the short-term money markets.

Q Just briefly, would you tell us what short-term money markets are?

A Yes, bankers acceptance, commercial papers, Treasury Bills, CD's.

THE COURT: CD's being certificates of deposit?

THE WITNESS: Yes.

Q As of March, 1970, in connection with your duties on behalf of the Union Bank, did you frequently purchase commercial paper for depositors at the bank?

A Yes, sir.

Q Did the bank receive any compensation for this?

A No.

Q Did the Union Bank as of March 1, 1970, have any policies or guidelines when it purchased commercial paper for a customer?

A the requirement was that all paper that was presented to the customer be the quality of prime.

THE COURT: That is the bank's policy?

THE WITNESS: Yes.

Q At this time you were in charge, as of March, 1970, of the investment division for the bank?

A For the short term money market, yes.

Q During this period of time when you purchased commercial paper for a customer, from whom would you purchase the paper?

A Several brokerage houses known in the field, such as Goldman, Sachs, A.G. Becker, Merrill Lynch. These were all offers of secondary commercial paper.

Q When you purchased commercial paper for customers were they aware you were purchasing it for the account of a customer rather than a bank?

A Yes.

Q How did they become so aware?

A They have the dollar amount to begin with, and we would normally tell them for a customer, requesting prime.

Q Would you also tell the broker the name of the particular customer?

A No, we would not.

Q Why not?

A To protect our customers so they would not be hounded by salesmen of the various companies.

Q To protect the bank's customers?

A That is right.

Q One of the brokers you purchased commercial paper from was Goldman, Sachs?

A Yes.

Q As of March 1, 1970, what was your understanding as to Goldman, Sachs' reputation?

A Very fine, a reputable house, well known for many years and without question high quality.

Q Which individuals did you deal with at Goldman, Sachs in connection with the purchase of commercial paper?

A Several in the office, Carl Fredrickson.

THE COURT: Which office?

THE WITNESS: The Los Angelos office. Carl Fredrickson, Don Duerson, and Cliff Coleman.

Q When you purchased commercial paper from Goldman, Sachs it was solely through its Los Angeles office?

A Correct.

Q Prior to March 1, 1970, had you ever advised Goldman, Sachs that Union Bank had any criteria or restrictions or guidelines in connection with purchasing commercial paper for a customer?

A The request was always, when we would ask for paper, that the quality be prime.

THE COURT: I don't think that is quite the question you were asked. As I understood, he asked you whether before March 1st you had advised University Hill --

MR. BREINDEL: Union Bank, your Honor.

Q Prior to March 1, 1970, had you ever advised Goldman, Sachs that in purchasing, that Union Bank had any restrictions or guidelines in connection with the purchase of commercial paper for customers of Union Bank?

A Our request of our brokerages was that they show us prime paper unless otherwise designated by the customer.

Q As of March 13, 1970, what if anything did you know about Brown Bros. Harriman Company?

A A very fine banking organization, principally dealing with our trust department, not particularly with our department.

Q As of March 13, 1970, what if anything did you know about the National Credit Office?

A A respected service that was available at the time, considered as quality, used by the bank for credit ratings, and when their ratings were listed as prime, it was accepted to be of prime.

2 Q To the best of your knowledge, was there any other service which rated commercial paper in March of 1970 other than the National Credit Office?

A Not at that time, that I was aware of.

Q Were you aware in March of 1970 that National Credit Office was a subsidiary of Dun & Bradstreet?

A Yes, I was.

Q What if anything did you know about Dun & Bradstreet in March, 1970?

A Also a very much accepted corporation for the services that they rendered and of high quality.

Q As of March 1, 1970, what was the Union Bank's relationship with University Hill Foundation?

A A depositor relationship for many years.

Q Apart from holding the Foundation's money did the Union Bank perform any other services for the Foundation?

A The courtesy of investing through our facilities and the safekeeping of their securities that were purchased.

Q Did the bank also provide for the redemption of those securities upon maturity?

A Complete service of acquisition and redemption.

Q During this period of time what individual did you deal with at the Foundation?

A Mr. Howard Fitzpatrick.

Q Do you know what his position was with the Foundation?

A President.

Q Did you deal with anyone else at the Foundation?

A On occasion his secretary would call, but usually the divisions were completely Mr. Fitzpatrick's and he would come on the line at the same time, basically Mr. Fitzpatrick completely.

Q As at March 1, 1970, for how long a period of time had you known Mr. Fitzpatrick?

A The account had been established with the Union Bank for many years. I knew of the account at least from 1968, '69, myself, as a depositor.

THE COURT: I didn't hear that.

THE WITNESS: 1968, '69, as a depositor.

THE COURT: Did you know Mr. Fitzpatrick at that time?

THE WITNESS: Via phone and person, yes.

Q Did you have a social relationship with Mr. Fitzpatrick?

A No.

Q Strictly business?

A Strictly business.

Q Prior to March 13, 1970, did you ever discuss the purchase of commercial paper with Mr. Fitzpatrick with respect to the Foundation?

A Yes.

Q Can you briefly tell us the substance of those discussions?

A Various purchases were made from time to time using CD's, government securities if necessary, commercial paper and commercial paper of variety of names would be shown and his selection would be the one purchased.

Q During these discussions with Mr. Fitzpatrick did he ever tell you that University Hill Foundation had any criteria or guidelines in connection with the purchase of commercial paper?

A Not that I am aware of, no.

Q Did he ever in discussing commercial paper with you prior to March 13, 1970, restrict his selections to any particular type or kind of commercial paper?

A Yes, prime names. This was a foregone conclusion between ourselves --

THE COURT: Instead of telling me it was a foregone conclusion, can you tell me what conversations you had with regard to that subject?

THE WITNESS: Yes, the selections of paper were to be prime. We designated prime.

THE COURT: Are you saying Mr. Fitzpatrick specified that?

THE WITNESS: Yes, sir.

THE COURT: Do you remember where such conversations occurred?

THE WITNESS: Via telephone.

Q Was there ever any occasion prior to March 13, 1970, in which Mr. Fitzpatrick asked you to purchase commercial paper where he did not request prime commercial paper?

A No.

THE COURT: I don't suppose everytime he talked to you he said he wanted prime, did he? It was there to begin with and what you are saying is he never said to you, "I don't want prime."

THE WITNESS: That is right.

Q On March 13, 1970, did you have occasion to discuss commercial paper with Mr. Fitzpatrick?

A Yes, on that date an order was placed.

THE COURT: Could we go slow on the events of this day. I want to know precisely, as well as Mr. LeMay can remember, what occurred on that day.

Q On March 13, 1970, did Mr. Fitzpatrick call you?

A Yes, sir.

Q Prior to that day you had not called him?

A No.

Q Would you tell us what Mr. Fitzpatrick said to you and what you said to Mr. Fitzpatrick during that call?

A As best as I can recall, it would be that he requested the investment of $600,000 for approximately a period of six months. What would be available for that, including commercial paper. I told him I would get back to him and I would solicit the various offerings that were available. This included a call to Goldman, Sachs --

THE COURT: Was that the end of your conversation with him?

THE WITNESS: Yes. These are pushbutton call-type things.

THE COURT: I know, but it's important to get the facts clear. You finished talking to him and you either push your button --

THE WITNESS: Yes.

THE COURT: Did you hold him?

THE WITNESS: I don't remember.

THE COURT: You immediately called then Goldman, Sachs?

THE WITNESS: Yes.

Q Do you remember anything else about this first telephone call? Have you told us all you presently remember about the first telephone call?

A I knew that I was looking for prime paper and had so requested prime paper.

THE COURT: Not what was in your head, but what you heard or said.

THE WITNESS: Yes.

Q Do you recall whether Mr. Fitzpatrick mentioned prime commercial paper to you during this conversation?

A Not particularly, no.

Q What happened after your first call with Mr. Fitzpatrick on March 13, 1970?

A Information was obtained for the availability of the instruments that would fit into the particular pattern --

THE COURT: Would you tell us what you actually did. You put down the phone with Mr. Fitzpatrick or you put him on hold. I don't think it's different, but then what did you do?

THE WITNESS: Called several of the dealers to obtain what was available for that period of time.

THE COURT: Do you remember sho you called?

THE WITNESS: Goldman, Sachs, A.G. Becker.

THE COURT: All right. That involved Becker, but tell us who you spoke to at Goldman, Sachs.

THE WITNESS: I can't say exactly, but either Don Duerson, principally the account man for our department --

THE COURT: Who else might you have spoken to?

THE WITNESS: Cliff Coleman. Also Carl Frederickson, who would sometimes take calls.

THE COURT: Regardless of who it was, do you remember what was said?

THE WITNESS: Not the details, except various papers would be given to me because I always would show three to four names to each customer. We never would show one name to a customer.

THE COURT: That is with respect to any security?

THE WITNESS: That is correct. What names they were at the time, I don't know.

THE COURT: All you can remember is that you called Goldman, Sachs and they gave you several names?

THE WITNESS: Correct.

Q By names you mean names of commercial paper?

A Yes, that were issuing at that time for that particular period of time.

Q Do you recall at this time how many names they gave you?

A Three or four.

Q Do you recall any of the specific names of the paper?

A At that time Avco was a principal seller, but it could have been anyone.

Q Do you recall that they gave you Avco as the name?

A No.

Q Do you recall they gave you Penn Central as one of the names?

A I wrote the order.

Q Do you recall anything else with respect to your first telephone conversation with Goldman, Sachs other than what you have just testified to?

A No. The request would go to the brokerage house, what is available for a specific date would come back, one, two, three,prices, ranges, and if they were available on the subject basis as to confirmation, I would report to Mr. Fitzpatrick what was available and then come back, he would select what he wished for the period of time, and then I would place the order.

3 THE COURT: That was your custom and you followed the custom on this day. Do you recall what you did after you got this information?

THE WITNESS: I called Mr. Fitzpatrick.

THE COURT: Did you present to him one name or more than one name?

THE WITNESS: More than one name, sir.

Q Did you present to him all the names Goldman, Sachs told you about?

A Yes.

Q During this conversation, to the best of your recollection, what did you say to Mr. Fitzpatrick and what did he say to you?

A His selection was Penn Central to be due in the latter part of September for a six-month period.

Q That was the extent of the conversation?

A That is correct.

Q Did you then telephone Goldman, Sachs?

A That is correct.

Q To the best of your recollection, what did you say to Goldman, Sachs and what did they say to you?

A The order was placed with the expression, "I will take the $600,000," for whatever date it was, September 25, 1971, '72.

Q At this time, Mr. LeMay, do you remember anything else about your telephone calls to Goldman, Sachs or Mr. Fitzpatrick on March 13, 1970?

A No, that would be the extent of the placing of the order.

MR. BREINDEL: Would you mark as Plaintiff's Exhibit 1 for identification a two-page memorandum designated in the pretrial order as 9.

xx (Plaintiff's Exhibit 1 marked for identification.)

THE COURT: I had assumed exhibits would be premarked and although we can't do it at this moment, I would ask before the end of the day that you get ready for that, at least premark them before the end of the day.

MR. MANEY: May we request that the exhibits, if they are being marked, be marked in the same numbering system contained in the pretrial order?

THE COURT: Yes.

MR. BREINDEL: Then this will be Plaintiff's Exhibit 9.

THE COURT: All right. At the conclusion of the trial you can give me a list of those admitted into evidence.

xx (Plaintiff's Exhibit 9 marked for identification.)

Q Mr. LeMay, can you identify Plaintiff's Exhibit 9 for identification for us?

A Yes.

Q What is it?

A This is a memorandum prepared by our legal counsel of Union Bank after a meeting between Mr. Howard Fitzpatrick and his attorney and the senior executive vice-president, Mr. Howell, our attorney, Mr. Breakstone, any myself in a meeting in our building in Los Angeles.

THE COURT: Dated March 4, 1971?

THE WITNESS: Correct, sir.

Q Do you know when this memorandum, Plaintiff's Exhibit 9 for identification, was prepared?

A As far as I know, Mr. Breakstone prepared it immediately after the meeting.

Q Did Mr. Breakstone show it to you on or about March 4, 1971?

A Yes.

Q At that time did you review Plaintiff's Exhibit 9?

A Yes.

Q Upon reviewing it, did you form an opinion as to whether or not it was accurate?

A Yes, I did.

Q What was that opinion?

A I believed it to be accurate.

Q To the best of your knowledge, does Plaintiff's Exhibit 9 accurately reflect the discussions on March 4, 1971?

A Yes.

Q To the best of your knowledge, does it accurately reflect the telephone conversations referred to on March 13, 1970?

A Yes.

MR. BREINDEL: At this time I offer Plaintiff's Exhibit 9 in evidence.

MR. GRAHAM: Objection, your Honor.

THE COURT: I have some question in my mind as to whether it's admissible. I wouldn't call it an ordinary business record but, in any event, we have the witness himself here who testified as to the precise telephone calls, has he not? These other calls, are these calls --

MR. BREINDEL: Calls he testified to.

THE COURT: I don't see it adds very much later for him to prove a memorandum saying the thing he said on the stand.

MR. BREINDEL: I think it's admissible concerning his past recollection, and maybe there is something he doesn't recall.

THE COURT: I don't know of any such thing at the moment. If that arises you can bring it up again.

I don't want to make a fuss in a non-jury trial about these things because I can always accept documents for what they are worth. I am just expressing myself that I don't think this adds anything to the live testimony.

Q Mr. LeMay, on March 13, 1970, did the Union Bank on behalf of the Foundation purchase Penn Central commercial paper in the face amount of $600,000?

A Yes.

Q And from whom was it purchased?

A Goldman, Sachs.

MR. BREINDEL: Would you mark as Plaintiff's Exhibits 1 and 2 for identification two Penn Central notes.

xx (Plaintiff's Exhibits 1 and 2 marked for identification.)

Q Mr. LeMay, can you identify Plaintiff's Exhibits 1 and 2 for identification for us?

A Yes, these were the physical notes that were presented by the representative of Goldman, Sachs to our New York representative, Irving Trust, against the payment on the 16th of March.

THE COURT: Which is 1 and which is 2?

MR. BREINDEL: The $100,000 one is No. 1, No. 785.

Q These are copies of the originals, is that correct?

A Yes, copies of the original notes presented.

Q Were these notes presented for payment on the maturity date?

A Yes.

Q What was that maturity date?

A September 25, 1970.

MR. BREINDEL: I would like to offer these in evidence.

MR. GRAHAM: No objection.

xx (Plaintiff's Exhibits 1 and 2 received in evidence.)

MR. GRAHAM: If it will expedite matters, we will be glad to let these exhibits be deemed marked now and mark them at the close of today's proceedings.

THE COURT: All right, we will do that. Thank you.

Q When these notes were presented for payment on maturity were they honored?

A They were not paid.

Q In connection with this transaction with Goldman, Sachs on March 13, 1970, did you receive a letter of confirmation from Goldman, Sachs?

A Yes, we did.

THE COURT: Is there any dispute about the mechanics of the transaction?

MR. BREINDEL: I don't believe there is. I think it's necessary to establish it for jurisdictional purposes.

THE COURT: It can be stipulated to. It's stipulated, is it not?

MR. GRAHAM: We are willing to stipulate that this confirmation statement, PX-4, was sent to the Union Bank, that is, after the transaction was completed.

THE COURT: I am not quite clear whether the defendants are raising a jurisdictional question in this case or not. I didn't notice any discussion in the memoranda or briefs, and I realize Judge Brieant has already ruled on the question.

MR. MANEY: We are not raising an attack under 12-2 on the grounds of interstate commerce. We are questioning whether there is a private right of action under Section 17.

THE COURT: But that is divorced from the question of mailing and telephoning.

MR. MANEY: The questions of jurisdiction that we are raising are pure questions of law separate -- I shouldn't say that. The question of whether it's a security under the 34 Act.

THE COURT: The question of jurisdiction under 17 is the same question you raised before Judge Brieant and he decided that in your favor and that is the sole question with regard to jurisdiction before me?

MR. MANEY: No, we also suggest that the commercial paper in issue is not a security under the Securities and Exchange Act, a question we presented to Judge Brieant and he decided against us.

THE COURT: Thank you for reminding me that I have to decide that question, too, but that doesn't depend upon the nature of the transaction between the parties, it depends upon the nature of the documents issued by the defendants.

MR. MANEY: That is correct.

MR. BREINDEL: In order to expedite matters, there is no question with respect to interstate jurisdiction as to the 33 or 34 Act.

THE COURT: Such questions being raised with regard to jurisdiction do not relate to the question of whether the documents were mailed or whether there was interstate communication.

MR. MANEY: That is correct, your Honor.

xx (Plaintiff's Exhibit 4 received in evidence.)

Q Do you recall the delivery terms in connection with the two notes which have been received in evidence as Plaintiff's Exhibits 1 and 2?

A Our correspondent, Irving Trust, is instructed to pay against delivery.

Q Where was the Irving Trust Company located?

A New York.

Q Were they notified by a telegram sent from Los Angeles?

A Our cashiering section in Los Angeles forwarded a telegram to Irving Trust giving them specific instructions to accept $600,000 in commercial paper from Penn Central against payment of a certain dollar amount.

MR. BREINDEL: Would you mark as Plaintiff's Exhibit 3 for identification that telegram.

MR. GRAHAM: No objection.

xx (Plaintiff's Exhibit 3 received in evidence.)

Q Is Plaintiff's Exhibit 3 the telegram which you just testified about?

A Yes, that is the telegram.

Q Would you briefly tell us how the delivery and payment of the notes were worked out?

THE COURT: I really don't think any of this is necessary. I don't think your description in the brief was challenged in any way.

MR. BREINDEL: Is that acceptable to defendant's counsel?

MR. GRAHAM: There is simply no objection to the cause of action interposed on the basis of interstate commerce not being used.

Q Mr. LeMay, as of March 13, 1970, were you aware of the fact that Goldman, Sachs was selling Penn Central commercial paper as a principal?

A No, I was not.

Q As of March 13, 1970 --

THE COURT: Can we, for the record, be sure that the witness understands, and we all understand, what you mean by the use of the words "selling as principal."

MR. BREINDEL: By selling as principal, I am referring to the fact that Goldman,Sachs was selling the Penn Central commercial paper as the owner of that paper rather than being the agent for the issuer.

THE WITNESS: I understand. I had no way of knowing whether it was as principal or as agent.

Q Were you aware, as of March 13, 1970, of the fact that Goldman, Sachs generally kept an inventory of Penn Central's commercial paper?

A No.

Q As of March 13, 1970, were you aware of the fact that Goldman, Sachs was the exclusive dealer for Penn Central's paper?

A No.

Q Do you know what I mean by the term "exclusive dealer"?

A Yes.

Q As of March 13, 1970, were you aware that the Penn Central commercial paper which has been sold to the Foundation was part of a $2,750,000 repurchase that Goldman, Sachs had made from an individual, a repurchase of Penn Central commercial paper prior to its maturity date?

A No.

Q Had you been aware of any of these facts what would you have done?

A Perhaps --

MR. GRAHAM: Objection. I think its hypothetical and there is no indication that the witness was in that position.

THE COURT: I will allow Mr. Breindel to ask Mr. LeMay what effect these facts would ordinarily have on his judgment with regard to desirability to purchase securities. In that regard he will have to be viewed as an expert witness and not as a fact witness.

MR. GRAHAM: May I respectfully request that it first be determined whether or not he ever had such an experience so he would have any ordinary practice in that regard.

THE COURT: Yes.

MR. BREINDEL: If I might point out, this is an omissions case and one of the defenses raised by the defendants is that the plaintiff would not have relied on the admissions even if it was aware of them. I don't know of any other way to prove or disprove that other than to ask the person who purchased it what he would have done had he been aware of the originals.

THE COURT: I will hear the testimony. You can comment on it as you wish hereafter. But I would like you to ask Mr. LeMay what his custom was with regard to what experience he has had in the purchase of such securities, how he reached a determination as to what factors were important and so on. Otherwise this testimony won't mean very much.

BY MR. BREINDEL:

Q Mr. LeMay, as of March 13, 1970, what experience, if any, had you had with commercial paper dealers who sold as principal rather than as an agent?

A We dealt with many of the commercial houses relying on the ratings that were accepted in the trade of Dun & Bradstreet, the NCO, and when we asked for prime names we accepted that as a prime rating.

THE COURT: Let me ask you this: is all that you did in the course of your making purchases for your customers to ask a broker or house that sold commercial paper to give you the names of the prime paper or did you make some independent judgment ever during the course of your experience as to what securities you would buy and, if so, I would like to know what criteria you used to determine what securities you would buy, sir.

THE WITNESS: We had our own policy for the bank, which was very strict in regards to the acquisitions of paper that was ruled by our senior loan committee.

THE COURT: Was your work governed in any way by those rules?

THE WITNESS: In this case it's for customers and we relied on the ratings for the houses doing business with us. We did not question the house.

THE COURT: I will allow you to ask the questions as to what he would have done if he knew these things, but it seems to me if he simply relied on the rating of the house all the time and he got the rating of the house, that is the end of the matter. You are free to argue what the consequences are.

MR. BREINDEL: There is a big duty to disclose, which goes into this.

THE COURT: I would rather have too full a record than not a sufficiently full record.

BY MR. BREINDEL:

Q Was it your understanding when the Penn Central paper was purchased for the Foundation on March 13 that the paper that was being issued was original paper, so to speak?

A As far as I was concerned, it was original documents that was delivered to us, whether it was a portion of another holding we had no way of knowing.

Q Would you have attributed any significance to the fact that the paper that was purchased from Goldman, Sachs was a portion of the repurchase from a Goldman, Sachs customer prior to its maturity date?

A It was represented as a normal purchase, and that is all I can tell you.

Q As of March 13, 1970, were you aware of the fact that Brown Bros. Harriman Company had removed Penn Central commercial paper from its approved list of commercial paper issuers?

A No, I was not.

Q As of March 13, 1970, were you aware of the fact that prior to that date Brown Bros. Harriman Company had on occasion purchased up to 15 per cent of the amount of outstanding Penn Central commercial paper?

A No.

Q Had you been aware of these facts, would you have done anything differently?

A I believe I would.

MR. GRAHAM: I would register my objection for the record.

THE COURT: I am going to allow the answer. I don't know how credible it can be because it's awfully hard for me to find on the basis of experience if Mr. LeMay is in a position to give that. You can ask him and I will ask defense counsel to cross-examine.

5 A I don't believe it would show a name. If there was a question we do not show the name as far as our operation was concerned. There are too many other papers available and we would not have shown Penn Central.

Q You say you would not have shown the name, what do you mean by that?

A Not shown it to the customer, disregarded it as not available.

Q In this particular instance you would not have told Mr. Fitzpatrick that Penn Central commercial paper was available?

A No.

Q Is that what you mean?

A Yes, sir.

Q As of March 13, 1970, were you aware of the fact that since the fall of 1970 Goldman, Sachs had been requesting Penn Central to increase its bank lines in support of the commercial paper from 50 per cent to 100 per cent?

A No.

THE COURT: I assume Mr. LeMay has been deposed on all this before and I assume counsel will stipulate that he was not aware of these various things which you claim --

MR. BREINDEL: This was not covered in the deposition testimony.

THE COURT: All right.

Q As of March 13, 1970, did you have any knowledge or information with respect to bank lines from commercial paper generally?

A Yes. Basically quality companies were covered completely. At least 100 per cent coverage of bank lines was the normal accepted practice by most issuing agents.

Q As of March 13, 1970, had you been aware of the fact that since the fall of 1969 Goldman, Sachs had been requesting Penn Central to increase its bank lines from 50per cent to 100 per cent and that Penn Central had not done this, what would you have done, if anything?

MR. GRAHAM: Objection.

THE COURT: You have a continuing line of objection.

MR. GRAHAM: May I make one more try. We are getting into a long series of these questions. Your Honor suggested that the questions could be asked on the assumption that the witness was an expert and the witness has shown himself not to be an expert. He has never done this or been in this position even once.

THE COURT: That is why I may disregard his testimony altogether, but I am going to allow Mr. Breindel to explore it and I am going to allow you to cross-examine and point it out to me and I may strike the testimony later on.

MR. GRAHAM: Thank you.

Q Do you recall the last question, Mr. LeMay?

A State it again, please.

(Question read.)

A We would not have shown the paper.

THE COURT: On what basis?

THE WITNESS: The basic reasons of questions as to quality.

THE COURT: Are you saying that that was the policy of the bank? What would you be relying on?

THE WITNESS: As soon as we have any signs of alarm in regards to any company that we are currently doing business with we will refrain until we are assured of the operation, so we withdraw the item until it has been clarified by our proper individuals.

Q Based on your experience in dealings short-term investments, Mr. LeMay, what was your knowledge as of March 13, 1970, as to the amount of bank lines, if any, customarily had by commercial paper issuers?

A With the rating prime it was assumed they would have 100 per cent a line.

THE COURT: Have you ever asked a broker to name a prime commercial paper for you and have had him name one but give you additional information, such as while its prime nevertheless this, that and the other?

THE WITNESS: Not in the type of conversation we are speaking of here, no.

Q Generally speaking, Mr. LeMay, how long would a typical telephone conversation with a broker be in connection with an average commercial paper transaction?

A One to one and a half or two minutes. In the course of a three-hour transaction we have received as many as 105 calls which would be booked in the course of a three-hour period.

Q As of March 13, 1970, were you aware of the fact that Goldman, Sachs had on February 9, 1970, sold $10,000,000 of its $15,000,000 inventory of commercial paper of Penn Central back to Penn Central?

A No.

Q Were you aware of the fact as of March 13, 1970, that on or about February 5, 1970, Goldman, Sachs had for the first time imposed an inventory limit of $5,000,000 on Penn Central's commercial paper?

A No.

Q Had you been aware of these facts on March 13, 1970, what would you have done differently, if anything?

A Again, we would not have shown the paper. We would have perhaps asked questions and not shown it to our customers.

Q Why wouldn't you have shown it?

A It would be a question of quality and we would have to check with further investigation, which I would have turned over to our credit department to do so.

Q As of March 13, 1970, were you aware of the fact that in the fall of 1969 Penn Central had advised Goldman, Sachs that it believed its fourth quarter operations would be in the black and that, in fact, Penn Central's fourth quarter railroad operations resulted in a $16,000,000 loss?

A No.

Q Had you been aware of that fact on March 13, 1970, what would you have done, if anything?

A Same reactions, withhold the name until further investigation.

Q Why is that?

A There would be reasons to question the quality.

Q Would there also be questions in your mind as to the capability of Penn Central's management?

A That wouldn't be for me to determine, but our credit department to determine.

THE COURT: I gather your department --

THE WITNESS: We are a salesforce.

THE COURT: And unless you get a perfect report about something you wouldn't go ahead with it?

THE WITNESS: No.

Q Mr. LeMay, as of March 13, 1970, were you aware of that fact that in September of 1969 Penn Central had advised Goldman, Sachs that it wouldbe in a very tight cash position for the first quarter of 1970?

A No.

Q And were you aware that at about the same time Penn Central had also told or asked Goldman, Sachs to sell as much of its commercial paper as possible with maturity dates into April, 1970, or longer?

A No.

Q Had you been aware of these facts on March 13, 1970, what would you have done differently, if anything?

A We would have withdrawn the name until further investigation by our credit department.

Q Why is that?

A It's the policy for us not to show names until we know that they are okay.

THE COURT: Now that I understand Mr. LeMay's policy in that his department in the bank were simply to accept anything perfect, it's perfectly clear that if he heard of something that was not perfect he would have turned it over to another department for investigation.

Q As of March 13, 1970, were you aware that on or about February 6, 1970, Penn Central had advised Goldman, Sachs that it was budgeting for a $56,000,000 loss in 1970?

A No, sir.

Q Were you aware of the fact that at the same time it had also told Goldman, Sachs that it would have to raise approximately 200,000,000 for its cash needs in 1970?

A No.

Q Had you been aware of these facts on March 13, 1970, what would you have done differently, if anything?

A The same reaction, withdrawn the name for further investigation.

Q Again why is that?

A The reason as to questioned quality.

Q As of March 13, 1970, were you aware that Penn Central was not using the proceeds from its commercial paper sales for current or short term transactions?

A No, I was not.

MR. GRAHAM: Objection, that assumes facts not in evidence.

THE COURT: Obviously, it's a subject we will have to get into.

Q Had you been aware of that fact on March 13, 1970, Mr. LeMay, what would you have done differently, if anything?

A No. 1, commercial paper is sold for short-term purposes only and it would have raised a question again as to quality.

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Q As of March 13, 1970, what was the basis of your information or belief that commercial paper sold for short-term purposes only?

A The limits for short term is a limit of 270 days and it's to finance only short-term investments.

Q When you on behalf of the Foundation purchased $600,000 of commercial paper from Goldman, Sachs, Penn Central commercial paper, was it your assumption that the proceeds from this purchase would be used for commercial transactions or short-term purchases?

A Yes.

Q As of March 13, 1970, were you aware of the fact that the National Credit Office had rated Penn Central or was rating Penn Central's commercial paper as prime?

A Yes.

Q As of March 13, 1970, were you aware of the fact that on or about February 5, 1970, National Credit Office had advised Goldman, Sachs that it would continue the National Credit Office's prime rating of Penn Central commercial paper if Goldman, Sachs continued to sell it?

A No.

MR. GRAHAM: May I assume that all these are being taken subject to connection?

THE COURT: Of course. Since there is nothing on the record on it, they are subject to connection.

Q Had you been aware of that fact, Mr. LeMay, what would you have done differently, if anything?

A Again withdrawn the name for further investigation by our credit department for lack of quality.

Q As of March 13, 1970, were you aware of the fact that during the period covered by February, 1970, and the first 12 days of March, 1970, that the Penn Central commercial paper was frequently on Goldman, Sachs' top 10 list --

THE COURT: Frequently what?

Q Frequently on Goldman, Sachs' top 10 lists of high inventory positions for commercial paper issuers?

A I was not.

Q Had you been aware of that fact would you have done anything differently?

A No.

THE COURT: Let's see what we mean by high inventory lists.

THE WITNESS: It was not uncommon for a company to have to raise for short term a block of 10 million. If the bank itself would buy blocks of that size and having 10 million on their books, wouldn't be an unusual transaction.

THE COURT: I know it's not unusual, but I want to know what he means by high list of whom?

MR. BREINDEL: The evidence will show that Goldman, Sachs compiled on a daily basis a list of those issuers who had the heaviest inventory positions, that is, on which they had their greatest inventory of commercial paper.

THE COURT: All right.

Q Mr. LeMay, had you been aware, as of March 13, 1970, of all the facts I just asked you, what if anything would you have done differently?

A I would not have shown the name of Penn Central to Mr. Fitzpatrick.

Q Again why is this?

A Because of a question of rating andquality.

MR. BREINDEL: No further questions, your Honor.

CROSS EXAMINATION

BY MR. GRAHAM:

Q My name is Philip Graham, Mr. LeMay.

As I understand your testimony, you are saying that if there were any, to use your words, signs of alarm, you would not show the commercial paper --

A That is correct. That would apply to any company.

Q You would not show paper shown you by a dealer to a customer such as University Hill, is that correct?

A That is correct.

Q How many times in the period prior to March 13, 1970, did this occur?

A It happened quite frequently.

Q It happened quite frequently?

A Yes.

Q Could you give me an example, please?

A In our own local there were many companies that were not rated. We would not show them unless they were specifically required by the customer to buy them. We would never show them. I don't want to go into names in particular, but we have them in Los Angeles, we had some on a national basis that we would not do just as we would not do certain items with major banks in the country, selling of Federal funds, it there is anything of that sort.

Q You are getting a little off the subject. Let's go back to commercial paper.

Is what you are saying that the bank would not, unless specifically requested, show to a customer paper that was not rated, is that correct?

A That is correct.

Q Rated by National Credit Office, is that correct?

A Yes.

Q That was the only rating agency at the time?

A Yes.

Q Can you give me any other examples apart from a lack of rating by the National Credit Office that would be a sign of alarm?

A Any rating that our own National Division would obtain about corporations that would question the quality, which would sometimes be passed on to us, don't show the name.

Q The National Division is what?

A The credit department that would be doing work with corporations across the country.

Q And the credit department monitors the credit worthiness of various companies with which the bank has banking relations?

A That is correct.

Q The credit department sends information to you in your department?

A Not always.

Q In what --

A If there is an alarm about selling commercial paper -- if for any reason they felt that the national ratings were wrong, they would tell us.

Q You are putting the cart before the horse.

I am asking you for alarms and you are telling me what the credit department would go after there was an alarm.

THE COURT: Has there ever been a situation in your experience where a security was presented directly to you and you directly said, "Well, before I do that I want to have the credit department look into it"?

THE WITNESS: Not that I can think of at the moment here.

THE COURT: When you say you can't think of at the moment,I don't want to short--hange you. Are you saying it hasn't happened or are you saying it has happened but you can't think of an instance?

THE WITNESS: I can't think of the companies, but we have had lists that would restrict our selling certain companies.

THE COURT: I don't doubt you have policies and instructions and the bank would tell you how to choose or what, but I am asking whether in any such situation without a prior advice to you from outside or inside the bank that there was anything questioned about a security you raised the question and asked the credit people to look into it.

THE WITNESS: That is correct. I would raise the question.

THE COURT: Can you give me such an example as to whether you ever raised such a question and had them check?

THE WITNESS: In a local instance we had a finance company that we had them check.

THE COURT: Can you tell me what was the kind of thing you asked them to check?

THE WITNESS: The request to push their paper.

THE COURT: You mean the finance company itself?

THE WITNESS: Yes, calling on us to show our paper, we need the money.

Q That was a direct issuer that did not sell through a dealer?

A Also sold through a dealer.

Q And was also selling directly through you?

A Yes.

Q You were buying paper directly through a direct issuer and selling it to a customer in that case?

A No. A small corporation would make themselves available to a dealer or a bank to represent them in the sale of paper. They could do both. They could have several people showing their paper. That was the case of this one.

Q They were both selling paper through a dealer and selling it through you?

A Correct.

Q So that in the cases where you selling the paper you were buying it from the issuer yourself and selling it to investors?

A We would buy direct from the customers as an agent for our depositor or customer.

Q You were doing that in this case, is that correct?

A Yes, we would do that.

Q Is this a company rated by National Credit Office?

A No.

Q Not a rated company?

A Not a rated company.

Q Let me renew my question as to whether you can give me an example of an alarm that came to your attention from outside the bank other than of a company not rated prime by NCO?

A No.

Q No example?

A No.

Q To the best of your knowledge, did it ever happen?

A Not that I know of.

Q You don't ordinarily get financial information over the telephone when you talk to dealers, do you?

A No.

Q Do you get information from any source prior --

A Now we do, but at that time, no.

MR. GRAHAM: on the basis of that testimony I move that we strike that testimony. The witness has had no experience that would bear on the hypothetical questions posed during the direct. He has shown himself not to be an expert. There is no evidence that that would be information either expert or otherwise.

THE COURT: I will consider it.

Q Let's go back if we can for a moment to your early training. I think you indicated on direct testimony that you had taken special courses in banking.

Can you tell me what they are, please?

A American Institute of Banking courses. I was a licensed stock broker in the State of California before I joined the bank.

Q You were a stock broker?

A Yes, sir.

Q With what firm?

A Quincy, Katz Associates in Los Angeles.

Q What year was that?

A 1950 to 1952.

Q Is that when you took the special courses?

A No. I was at the bank after that and I took banking courses at that time starting in 1952.

Q The courses you took while you were at the bank, did that include courses of credit analysis?

A Some credit work, some general banking courses, a variety, yes.

Q You worked in the investment department of the bank, is that correct?

A That is correct.

Q What were the functions of the investment department?

A Principally to meet the needs of the bank itself, the cash position, the investment portfolio of the bank, and from there to our customers.

Q Did this relate to debt investments only or did it include equity investments?

A The banks are restricted as to what type of investments they can get into and these are usually governments. We can represent people on things that do not infringe upon the brokerage field.

Q What functions did you have in the investment department other than the function of calling commercial paper dealers and inquring what was available and on occasion purchasing commercial paper?

MR. BREINDEL: I assume we are talking about the period approximately March, 1970?

MR. GRAHAM: I would like to take it back two or three years before that.

THE COURT: Discuss what period you are talking about.

MR. GRAHAM: 1968, 1969 and the first quarter of 1970.

THE COURT: And you are asking?

MR. GRAHAM: What functions Mr. LeMay has had as more or less --

THE WITNESS: I managed the short-term money market which included the management of the acquisition of Federal funds for the bank needs or sale of Federal funds, the purchase of the commercial paper for the bank that we would need from time to time.

THE COURT: For its own account?

THE WITNESS: Yes, strictly talking for the bank only. The purchases of CD's or the sale of our own CD's on a national basis to corporations across the country, the merchandising of bankers' acceptances, also assisting in the government field of treasuries and the Federal agencies.

Q Did you have a credit analysis function with respect to any of those items that you have described?

A No.

Q You were in charge of keeping track of rates and maturies and availabilities and deciding what to do with the money, is that right?

A That is correct.

Q But not deciding anything about the credit --

A There is no credit involved. You are talking about government securities or Federal funds, and there is no credit ratings as such on those items.

In commercial paper my guidelines were placed to me by a senior loaning committee as to what we could or could not buy for the bank's portfolio.

Q There is a difference in risk then between commercial paper and government securities?

A Yes.

Q You mentioned Federal funds. Would you tell the Court what they are, please.

A The day funds traded by the banking systems between themselves through Federal Reserve.

Q Is it also used to refer to funds available for use on the same day?

A Yes. That is merely an expression.

Q Let's discuss for a moment the commercial paper purchases which you made for the bank's own account. How did you determine what issuers you would purchase in that case?

MR. BREINDEL: Objection, I fail to see the relevance of this.

THE COURT: Overruled.

A The senior loan committee would give us the approved list of major companies that had depository relations with the bank itself and we were limited to a purchase of any one name up to and including $5,000,000 in any one company.

THE COURT: You only bought the paper of your own customers?

THE WITNESS: That is correct, on a direct issuing basis only.

Q Each of these issuers was a customer of the bank for other purposes?

A That is correct.

Q And this list was put together by the senior loan committee?

A Correct.

Q And do you know the basis upon which it was put together other than the banking relationship?

A That was sufficient.

Q I am sorry?

A That was sufficient.

THE COURT: Are you saying that the bank approved --

THE WITNESS: The bank approved the lines of credit. For your own benefit,when a bank establishes a line to a major corporation, say for Sears, in our case it was approximately $7,500,000.

If Sears exercise their line then on thatday I could not buy their paper because the line had been exercised. If they had not commitments to us in the form of a loan and they were available and we needed money to invest, we could buy their paper. These are the guidelines established not only by our bank.

Q Is it a legal lending limit problem that causes the policy which you have just described?

A Yes.

Q Do you recall what the bank's legal lending limit was in 1969 and early 1970?

A Approximately $7,500,000.

THE COURT: Is that to any one customer?

THE WITNESS: Yes.

Q You mentioned the word or phrase"bank lines." Would you tell the Court what a bank line of credit is?

A A bank line is something that major corporations acquire to cover normally their short term debt obligations in the commercial paper field, so if they are unable to sell the commercial paper they can fall back on to their bank lines to cover their immediate needs.

Q Is that the only purpose for which a bank obtains a line of credit?

A No.

THE COURT: A bank line means it does not express the willingness on the part of the bank to lend a customer up to a certain amount during a certain period of time?

THE WITNESS: That is correct.

THE COURT: It could be used for ordinary purposes also?

THE WITNESS: Yes. It doesn't have to be commercial paper.

Q Are these bank line commitments ordinarily in writing?

A They are in writing.

Q Have you ever seen such a writing?

A Yes.

Q What does it say, do you recall?

A No, I don't recall.

8 MR. BREINDEL: I think we are going far afield.

A (Continuing) That is into the loaning field.

MR. GRAHAM: I think it's pertinent because the question of the nature of bank lines is an issue raised by plaintiff on his direct examination and raised in his brief.

THE COURT: The nature --

MR. GRAHAM: The nature of bank lines is critical as to whether they have any credit significance from the commercial paper point of view.

MR. BREINDEL: That may be, but whether or not Mr. LeMay has seen a written commitment for a bank line, I believe, is irrelevant to that issue.

MR. GRAHAM: That was preliminary to asking what a typical bank line commitment says.

THE COURT: Overruled. I am not going to decide what the bank's custom is based solely on Mr. LeMay's experience, if his experience hasn't been general, but it's relevant.

Go ahead.

Q Let me withdraw the question and ask you do you know whether or not when a bank line of credit is made available to a company for a period of time in the future, whether any conditions are attached to the use of the line?

MR. BREINDEL: Same objection, your Honor, especially since we don't know what period of time we are talking about.

THE COURT: Let's hear what Mr. LeMay has to say. He ought to be able to answer that question. If you think his experience is inadequate to cover the subject, you can bring in another witness.

MR. GRAHAM: I didn't bring in Mr. LeMay as an expert, he was set up as an expert here.

MR. BREINDEL: Objection to the characterization.

THE COURT: All right, let's go on.

A Lines of credit are formed by the credit department. I had nothing to do with credit.

THE COURT: We are not assuming you did. Just tell us how it works.

THE WITNESS: A credit line is established with a company or a company or individuals for aperiod of time. During that period of time they have the privilege of exercising a loan from the bank up to the amount that is so stated.

Q Isn't it a fact, Mr. LeMay, that the line of credit is extended on the condition that the bank continue to be satisfied with the credit worthiness of the potential borrower?

A Undoubtedly, yes.

Q That is not always specified?

A It's not always specified in the letter.

Q Your answer was undoubtedly yes, is that right?

A It would be up to the credit officer doing the particular loan. Each one would be individually appraised. You would have to name very exact specifics.

THE COURT: Let me be sure I understand it. I think I do, but I never thought there was any doubt about it.

Tell me if there is any doubt about it. Even a bank authorizes a line of credit whether in writing or otherwise, let's assume in writing, to a customer, and let's assume for $1,000,000 for three months or six months, if the bottom falls out of the business of that customer in the second month the bank does not consider itself legally obligated to continue lending, does it?

THE WITNESS: That is correct.

THE COURT: Or if in the judgment of the bank there is substantial reason caused by change of conditions, then the bank would feel both legally and morally free to change its mind, wouldn't it?

THE WITNESS: Correct.

Q Unlike the situation where you work from an approved list for the bank's own account, in the case of a customer you could purchase any commercial paper that the customer would wish to purchase, is that correct?

A If the customer so named the company he wished and if we could obtain it for him we would do so.

Q In the case of purchases for the account of customers as opposed to thebank's own account, did the bank have a judgmental role that it played? In other words, was there any discretion involved in what he purchased?

A No.

Q None whatsoever? Is that correct?

A In regards to what?

Q Purchases for the account of customers, that was the customer's choice?

A The customer's choice. We act as agent.

THE COURT: The customer's choice certainly is the customer telling you what he wants. What if he doesn't tell you what he wants?

THE WITNESS: We show him a selection.

THE COURT: To that extent you do exercise a choice.

THE WITNESS We show him what is available.

THE COURT: You said before you wouldn't show what wasn't available, and that would be a discretion.

THE WITNESS: Yes.

Q You were in no way acting as an investment counsellor, were you, for these customers?

A No.

Q Did you ever tell Mr. Fitzpatrick of University Hill Foundation that you were not acting as an investment counsellor in any way assisting him in purchasing commercial paper?

A Mr. Fitzpatrick knew that our investment division was not an investment counselling firm.

THE COURT: Please don't tell us what you knew.

THE WITNESS: We have so stated through customers that we are not in the investment counselling business. We charge no fee for services rendered.

Q Did you convey that information to Mr. Fitzpatrick in words or substance?

A Yes, in words or substance.

Q You testified that it was the bank's policy to show more than one name to a customer and not simply to reflect a single name?

A That is correct.

Q Do you know the basis for that policy?

A To give the customer a choice always so that we would not fall into the category of showing a recommendation. When I say "we," Union Bank.

Q And you didn't view, did you, the reflecting of several names to University Hill, as making a recommendation to University Hill?

A Did I make a recommendation by showing several names?

Q Did you view that as a recommendation?

A No.

Q You did not?

A No.

Q Back in 1969 or at any time prior to March 13, 1970, did University Hill convey to you any investment criteria of its own?

A No.

Q None whatsoever?

A None.

Q Did Mr. Fitzpatrick ever tell you that he only wished to purchase prime commercial paper?

A The request for prime commercial paper was requested.

THE COURT: By whom?

THE WITNESS: By Mr. Fitzpatrick.

Q And that meant prime as rated by the National Credit Office, is that correct?

A That is correct.

THE COURT: When you say it meant that, did he tell you that he wanted it by the National Credit Office or did you just assume he used that expression?

THE WITNESS: That was the only one giving ratings at the time and that was their expression for a rating.

THE COURT: The answer is he didn't use those words?

THE WITNESS: The word "prime" was used.

THE COURT: But he didn't say prime by the National Credit Office?

THE WITNESS: No.

Q But Mr.Fitzpatrick never mentioned National Credit Office, is that correct?

A No.

Q Is it fair to say that at the time he mentioned the word "prime" you understood him to be referring to National Credit Office rated prime?

A Yes.

Q Do you know whether or not prime has any general meaning in the commercial paper marketplace other than prime as rated by NCO?

A At that time NCO was the only company doing ratings. Prime was their name that they used for quality. That was accepted in the trade.

Q When you say "they," you are referring to National Credit Office, is that correct?

A Correct.

Q The only meaning in the marketplace that you knew of that prime had in 1969 and the first quarter of 1970 was the rating given commercial paper by NCO?

A Correct. The name exclusively used by them.

Q That was the exclusive in your word in the marketplace?

A Yes.

Q Did Mr. Fitzpatrick ever tell you that when he said prime he meant faith?

A He certainly would imply that in quality, yes.

Q I am sorry?

A He would imply what the word prime as meaning quality, that is what the rating meant.

9 THE COURT: We are trying to get the facts. Did he ever tell you?

THE WITNESS: He told me to buy prime paper.

THE COURT: Did he ever use any other word?

THE WITNESS: No.

Q Did you ever have discussions with Mr. Fitzpatrick as to the meaning of the word "prime"?

A No.

Q When you called Goldman, Sachs or another commercial paper dealer in order to inquire where commercial paper is available, how long does a conversation take typically, and again my questions are focused on the period 1969 and up to March 13, 1970?

A No more than possibly half a minute or longer to recite what is necessary.

Q How long typically is the conversation that you had with University Hill Foundation?

A Approximately the same time.

Q Going now specifically to the March 13 transaction which you have already testified to --

THE COURT: I think it would be a good idea for us to take a short recess at this time. I normally do take a recess about half through the morning.

(Recess.)

Q We were focusing on the Penn Central transaction itself, Mr. LeMay, the one on March 13, 1970.

I believe you testified that you called both Goldman, Sachs and A.G. Becker, is that correct?

A Another broker, yes.

Q Was it Becker?

A I don't remember if it was Becker or Merrill Lynch or who.

THE COURT: You did specify Becker before.

THE WITNESS: Only in the category that we always called two to three dealers. Whether it was Becker --

THE COURT: I am only asking if you remember who else you called.

THE WITNESS: No.

Q Did you get from the other commercial paper dealer that you talked to that day names of commercial paper issuers that were available?

A Yes.

Q Did you reflect those names back to Mr. Fitzpatrick?

A That is correct.

Q Do you recall of the names you got that fit Mr. Fitzpatrick's maturity and amount requirements that day, did you reflect them all back to him?

A Yes, I would have.

Q Do you recall having done it that day?

A Yes.

Q That would be your ordinary practice?

A That is an ordinary practice. We always show a variety of names, never one.

Q My question was a little different. My question is whether when you found the names from the commercial paper dealer that fit the maturity and amount requirements did you show all of those names that fit the requirements?

A Yes.

Q Did you do that on March 13?

A Yes.

Q That was your ordinary practice?

A Yes.

THE COURT: The more the merrier, right?

THE WITNESS: That is right.

Q Speaking for Goldman, Sachs on the 13th of March, did you ask for any financial information from Goldman, Sachs about Penn Central?

A No.

Q Were you given any financial information during the phone conversation?

A No.

Q At the time did you have any understanding as to whether or not Goldman, Sachs had any financial information on Penn Central?

A No.

Q You didn't know whether or not they did?

A No.

Q Do you know whether or not you had an understanding as to whether or not Goldman, Sachs had a credit department?

A I didn't ask and I had no way of knowing.

Q You testified at the outset about Goldman, Sachs' reputation, is that correct?

A That is correct.

Q It was very high?

A Yes.

Q And was it your understanding that they were selling commercial paper that they had investigated in any way?

A A quality house represented quality merchandise and we considered them a quality house.

Q So you knew they were making some kind of investigation, didn't you?

A That would be routine.

Q It would be routine?

A Yes.

Q So you assumed that that was the case?

A That is correct, it was an NCO rating. I knew it was an NCO rating company.

Q That is not responsive. What I am trying to get at is whether you knew -- did you know whether or not Goldman, Sachs was making any investigation?

A I did not know if they were making a personal investigation with regards to Penn Central.

Q And you didn't know whether or not they had a credit department?

A Yes, I did.

Q You assumed they did?

A Yes, I knew they had credit departments.

Q Did you understand that its function was to make credit investigations?

A That is correct.

Q Of commercial paper issuers?

A That is correct.

Q Did you assume they were doing one on Penn Central?

A They published statements on those items.

Q They published financial statements on Penn Central?

A On some of these items.

Q So you knew they were collecting information on Penn Central then?

A That is correct. It's an accepted practice,sir.

Q To make an investigation?

A Not for me, for them.

Q I am asking you what you understood at the time about Goldman, Sachs' practice?

A I relied on Goldman, Sachs completely for quality paper.

THE COURT: I think we know what you mean, but let's get it straight now.

First of all, you knew NCO made it a rating.

THE WITNESS: Correct.

THE COURT: Secondly, you knew Goldman, Sachs had a credit department and, third, it was customary for outfits like Goldman, Sachs to make credit investigations in regards to such matters?

THE WITNESS: Correct.

THE COURT: Fourth, they published material about such matters?

THE WITNESS: Correct.

THE COURT: And, fifth, although you didn't specifically know whether they had made an investigation as to this particular line of notes, you assumed they did?

THE WITNESS: That is correct.

Q A credit investigation from your experience, does it often communications with management of a company that is being investigated?

A It would, yes.

Q That was the ordinary practice?

A Yes.

Q Did you assume that Goldman, Sachs had management contacts with Penn Central?

THE COURT: Does he now or did he then?

MR. GRAHAM: Did he.

A Yes, I would.

Q And the contents of those management discussions were not communicated to you during your conversation?

A None whatsoever.

Q And you never asked for any?

A No.

Q Although you assumed they had some?

A Yes.

THE COURT: Would it be too blunt to say that in your mind what was good enough for Goldman, Sachs was good enough for you to pass on to your customers?

THE WITNESS: You are absolutely right, Judge.

Q Did you assume at the time that all the information that Goldman, Sachs had compiled, including its management contacts and the information from other sources, that all of that information was favorable to Penn Central?

A I had no way of knowing what they gathered or what they did not gather.

Q Is it fair to say --

A My relationship in this transaction was prime, quality, Goldman, Sachs, quality accepted. Good enough for Goldman, Sachs., good enough for us.

Q When you say "us," are you referring to the bank or University Hill?

A I am referring to my position as a representative of the bank for the selling of commercial paper to customers.

Q Maybe I misunderstood. I thought you testified earlier that the bank was not exercising any judgment, it was passing on names --

A Passing on names that were considered to be as quality. That is not a judgment, sir. That is only a name that a company represents as Mr.Fitzpatrick told me prime, meaning quality. Goldman, Sachs was a firm representing that.

THE COURT: I don't see any mystery here. I don't want to foreclose you from asking anything that we all think is important, but you understand the bank's role to have been to present its customer with as many names it could get of people who were issuing or selling prime paper or the amount required and it's the testimony of Mr. LeMay, insofar as Goldman, Sachs is concerned, he didn't know what they knew, but he relied on them because of their reputation and that if they gave him a name of a security, let's call it without having technical meaning to that phrase, it was good enough for him to pass on to his client as a possible item that his client might wish to purchase.

Is that a fair characterization?

THE WITNESS: Yes, sir, very much so. Thank you.

Q You never asked Goldman, Sachs for any financial information, is that correct?

A No.

10 Q You mean that is correct, you did not?

A I did not ask for financial information.

Q And University Hill asked you for no financial information prior to the Penn Central purchase?

A No.

THE COURT: You mean yes, they did not?

THE WITNESS: That is correct, they did not ask for any.

Q Did you ask Goldman, Sachs whether they had any information in their files that was unfavorable about Penn Central in any way?

THE COURT: My understanding is he didn't ask them for any information at all, period.

Q You never asked them whether there was anything that would alarm you and send you running to your credit department?

A No.

Q You never inquired?

A No.

Q Did you read the Wall Street Journal in 1969 and early '70, Mr. LeMay?

A Yes.

Q As regularly as you could?

A As best as my time would allow.

Q It's available on the West Coast?

A Yes.

Q And you tried to read it every day?

A To a certain extent, yes.

Q As part of keeping up with the kind of news you needed to know for your business?

A That is right.

Q Were you aware from reading the Wall Street Journal that there had been a merger of the New York Central and the Pennsylvania Railroad, this big railroad had been put together?

A There was talk, but only paper talk that the ratings were not changed and it didn't affect our situation and it was not an alarm to us.

Q You were generally aware that the merger had taken place, is that correct?

A No, I was not.

Q You were not aware that the merger had taken place?

A Other than gossip in the paper, but to actual facts, no, I didn't know the details.

THE COURT: I am not talking about details. Just that it occurred.

THE WITNESS: Yes.

THE COURT: After all,the name Penn Central was known --

THE WITNESS: That is correct.

Q Were you aware that there was hope that the merged company would result in savings for the company? Hoped savings.

MR. BREINDL: I object to the form of the question.

MR. GRAHAM: I am asking what he got from reading the Wall Street Journal.

THE COURT: Savings by the merged companies.

THE WITNESS: There was a merger in the thing, but I didn't go into the details of it.

Q I understand you are saying you didn't go into the details. I am trying to get what kind of general knowledge you had for this merger which was pretty big financial news.

A Yes, it was well publicized and well read, but I don't remember the details of it.

Q Was there talk in the newspapers at financial community generally that there would be savings as a result of this merger ?

A The intentions were such.

Q And that it would take some time for those to take effect?

A Yes.

Q I show you Goldman, Sachs Exhibit H, which is a Wall Street Journal article dated January 31, 1969, and it has been premarked. The question is whether you recall reading this article at or about that time?

A I don't know if I did or didn't.

THE COURT: If you have a whole bunch of these, I suggest you give them all to Mr. LeMay, so if he can remember any of them, which would be surprising, he can so state.

MR. GRAHAM: I will do that, your Honor.

THE COURT: We might as well have an expression of views with regard to the admissibility of this material. Do you have anything to say about it, Mr. Breindel? I am not inviting an objection.

MR. BREINDEL: Right now the question asked is, has he seen it. If he hasn't seen it, I think it's obviously inadmissible.

THE COURT: I don't know it's obviously inadmissible. I assume the defendants are going to propose to admit all the Wall Street Journal articles and I think we might as well talk about that. Unless you feel for some reason you don't want to talk about it now.

MR. GRAHAM: To simplify matters, I will offer Exhibit H, Exhibit A-182, Exhibit A-195, Exhibit A-211 and Exhibit A-B, and I offer them, your Honor, not for the truth of the contents of the articles, but for the fact that the articles appeared and that what appears in the Wall Street Journal is public notice at least with respect to the financial community and the market.

THE COURT: That may be true, is that right? It's public notice that may be true.

MR. GRAHAM: It's public notice that the articles appeared and that the railroad was putting together these statements.

THE COURT: Mr. Breindel, it seems to me the admissibility of this material depends on the question of whether what information was public is relevant at all. Don't you agree that that is the question?

MR. BREINDEL: To the extent the information bears on the omissions in issue here, I believe it's relevant. To the extent it doesn't bear on the omissions or misrepresentations involved in the case and the witness hasn't seen it, I don't see it's relevant, your Honor.

MR. GRAHAM: Your Honor, some of the alleged omissions relate to the earnings picture of Penn Central in the late winter and early spring of 1970. It's Goldman, Sachs' contention in part that in the context of what was public knowledge, whatever Goldman, Sachs may have known, was an obvious extension and need not have been disclosed and was not material.

THE COURT: Subject to Mr. Breindel objecting to any one of these exhibits, I would allow all such exhibits to be received in evidence, and subject to commenting on them, of course. It seems to me there is no question that the credit worthiness of the railroad is a critical matter in relation to the trial, and the information that was available on that point may or may not be imputable to other people, but at least I don't know what the information was.

In addition, of course, it's the position of Goldman, Sachs that the good faith of their opinion rendered as to the credit worthiness of the railroad is at issue and this material would be relevant to the question of the good faith of their opinion, and there is also the question of the extent to which a misrepresentation or an omission is affected by what the person making the misrepresentation or making the omission has the right to assume that the other party knows.

For all those reasons I will accept these items on a general basis but without prejudice to objections.

MR. BREINDEL: May I make a standing objection to all these type of documents?

THE COURT: Of course.

MR. BREINDEL: It's not relevant unless the particular witness has testified that he read it. It's irrelevant unless it pertains to specific misrepresentation or omission involved in this case and, further, in any event, it should only be admitted subject to connection to defendant later proving that somebody in defendant's organization relied on these particular documents as giving evidence to the public so that they wouldn't have to give it to the public.

THE COURT: All right.

MR. GRAHAM: I might note for the record that these exhibits are premarked, I believe.

xx (Defendant's Exhibits H, A-182, A-195, A-211 and AB received in evidence.)

BY MR. GRAHAM:

Q Have you had a chance to look at those articles, Mr. LeMay? Without trying to read the entire articles, have you read through them briefly to check the headlines?

A I have checked the headlines.

Q Do you recall reading any of those articles back in 1969?

A I don't remember exactly these particular items, the general appearance of Penn Central in discussion, no, I don't remember.

Q Whether or not you recall reading one of the specific articles, you were generally aware, were you not, that the operating losses of Penn Central were increasing during this period?

A No, not from that standpoint.

THE COURT: What do you mean not from that standpoint?

THE WITNESS: Not that they were suffering losses to the point of changing their quality rating.

11 Q That wasn't the question, Mr. LeMay. The question was whether you were aware --

A That was the answer, though.

THE COURT: You want to get back to California, don't you?

THE WITNESS: All right.

Q The question is whether you were generally aware at the time that Penn Central was suffering operating losses.

A Yes, generally.

Q Were you aware that they were increasing during this period?

A No.

Q You were aware they were suffering losses?

A Yes.

Q And you did try to read the Wall Street Journal as often as you could?

A As often as I could, yes, I am not an analyst.

Q Is there anything in these articles or in your general knowledge about the operating losses during the period that caused you the kind of alarm that made you run to your credit department and ask for more information?

A No, not for myself. These were the same type of articles read byour customers and the paper was continued to be requested or sold to customers.

Q Would you characterize the information, just focusing on the headlines of the article, would you characterize that as favorable or unfavorable?

A Unfavorable.

Q So it was possible that unfavorable information could come to your attention that would not send you running to the credit department, is that right?

A Not in this case no.

Q I am sorry, I don't understand that.

THE COURT: You mean it was not possible or you didn't?

THE WITNESS: I did not refer this to the credit department because they were reading the same paper as I.

Q You did sell Penn Central to University Hill and did you sell any other Penn Central commercial paper?

A Yes, we did.

Q To a number of other customers?

A Yes.

MR. GRAHAM: On the same basis I offer in evidence Exhibits 180 and 187, the Wall Street Journal articles.

THE COURT: On the same basis of Mr. Breinel's objection, it will be received.

(Defendant's Exhibits A-187 and A-180 received in evidence.)

Q Would you look at Exhibit A-187, please, Mr. LeMay.

A Yes, sir.

THE COURT: Specify for the record the date. That is November 28, 1969.

Q Do you recall reading that article at or about that time, Mr. LeMay?

A No, sir.

Q Do you remember being aware that Penn Central omitted a dividend in late 1969?

A I don't remember.

Q Could you look at A-180.

THE COURT: Dated February 26, 1970.

THE WITNESS: Yes.

Q Do you reading that article at or about that date?

A I don't remember.

Q Do you recall being aware that Penn Central omitted a second dividend in February, 1970?

A No, sir.

Q Did you have any general awareness that Penn Central was in a tight cash position during this period?

Just generally now. I am not asking you to focus on specific numbers, but from reading the Wall Street Journal and otherwise were you aware generally that Penn Central was in a tight cash position?

A No.

Q You were not aware of that?

A No. I was not aware of that.

Q If on March 13, 1970, at the time of your conversation with Mr. Fitzpatrick of Goldman, Sachs, if at that point you had wanted to obtain information on the published earnings of Penn Central within the bank, how would you have gone about doing it?

A Requests to our credit department.

Q To give you that information?

A Yes.

Q Suppose you had wanted to know about the working capital of Penn Central?

THE COURT: Working capital?

MR. GRAHAM: Yes.

A I wouldn't have asked. If I was alarmed I would let the credit department make the decision, and it would be their decision, not mine.

Q The question was if you had wanted to know.

Let me put the question more broadly. If you had wanted any financial figures about Penn Central and wanted to get them within the bank in every case, would it be the credit department that you would go to?

A Yes.

Q Did the investment department have a copy of Moody's?

A Yes.

Q What about Moody's Transportation Record?

A They had it at the time, yes.

Q And Standard and Poors, too?

A Standard and Poors, we had their service, yes.

Q Did the investment department get the supplements to those that came out from time to time, both Moody's and Standard and Poors?

A We on the sales force did not get into those in doing analytical work.

Q The only question is whether or not the investment department got those supplements.

A They were available in the investment division.

Q And they were available to you?

A Yes.

Q What other kind of information did the investment department accumulate in the way of financial information on companies?

A The investment department used such services for the rendering of their own investments alone not for this type of thing. We relied on prime ratings --

Q You are not answering the question. The only question is what information there was apart from Moody's and Standard and Poors. Try and focus on that question, what other documents were there in the investment department?

A The services that were available in 1969 were Standard and Poors, Moody's, Dun & Bradstreets, NCO.

Q The investment department subscribes --

A The investment department did not subscribe to NCO. Our credit department had the service available. It was available through our section.

Q The credit department subscribed to it?

A That is correct.

Q And that was available to you?

A Correct.

Q Is there any information in the credit department that was not available to you as far as you know?

THE COURT: You didn't go to the credit department in connection with this purchase, though, to find out what the rating was, did you?

THE WITNESS: No, sir.

Q I believe you testified that Goldman, Sachs distributes financial information sheets from time to time, ias that correct?

A Yes, they were mailed out.

Q And they reached you after the transaction was completed, is that right?

A They would be mailed out coming in with their confirmations to our cashiering sections, yes.

Q They did reach you after the confirmation, after the transaction was completed, is that right?

A Yes.

Q In the case of University Hill, did you pass those financial sheets on to Mr. Fitzpatrick?

A No.

MR. BREINDEL: I object on the grounds that there has been no testimony that information sheets were received in connection with the Penn Central transaction involving the Foundation.

THE COURT: I thought we were talking about confirmations. Are you going beyond that?

Q Let me ask the question. I believe a confirmation was received, is that right?

A A confirmation was received, correct.

Q Do you recall whether or not any financial information from Goldman, Sachs was received with that confirmation after the transaction?

A No, I don't remember.

Q Do you recall as a general matter whether or not financial information was received after the transaction?

A No, because I did not receive that type of mail.

Q As a general matter, was information of that kind ever forwarded to University Hill Foundation?

A No.

Q Did Union Bank have any banking relationship of any kind with Penn Central?

A Not that I was aware of.

THE COURT: Do you know of any now? Do you now know whether there was any then?

THE WITNESS: I have no details of knowing if they had anything at the time, no. At that time I did not.

THE COURT: I am not asking if you did at that time. That was the first question. The second question is, do you now know whether --

THE WITNESS: I believe our International Department had some activity with them.

THE COURT: About what time would that have been?

THE WITNESS: I don't know, sir. I have no idea.

Q Would you please tell the Court as much as you do know, know now about that transaction or about that loan.

A Absolutely nothing.

Q Do you know that it was a loan made to a subsidiary of Penn Central Company?

A No, sir, I dont know the details and I never inquired.

THE COURT: Who would know?

THE WITNESS: That would be the section that handled it in the bank. I don't know.

THE COURT: I will leave it to you gentlemen to go into this further if necessary.

2 Q Do you know what the size of the loan was?

A No.

THE COURT: The implication is that there was a loan, is that correct?

THE WITNESS: I believe there was, but I don't know the details.

THE COURT: Nobody is holding you to know the details. I want you to tell me what you know.

THE WITNESS: I believe there was.

THE COURT: But another department of the bank.

THE WITNESS: Possibly.

THE COURT: To some entity --

THE WITNESS: Something in the overall subsidiaries or somethingof that sort, yes.

Q Does the name Penn Central NV refresh your recollection?

A No.

Q You don't know whether or not the loan was to that entity?

A No, I don't.

Q Do you know why Union Bank had no other banking relations with Penn Central?

A No.

MR. BREINDEL: I object to that question, your Honor.

THE COURT: Overruled.

A No.

Q I think you told me, but I can't remember, what was Union Bank's legal lending limit?

A Approximately seven and a half-million, I believe at the time.

Q Taking you back again to March of 1970, did you have any understanding as to how, if at all, University Hill obtained financial information about issuers of commercial paper they were considering purchasing?

A No.

Q You had no understanding as to that?

A No.

Q Did you have any understanding as to whether or not they obtained information about issuers?

A No.

Q No understanding one way or the other?

A No.

Q You testified earlier, did you not, that you were not aware that Goldman, Sachs was selling Penn Central commercial paper as principal, is that correct?

A That is correct.

THE COURT: It's correct that that is what he said on direct.

Q Do you have any understanding as to whether or not commercial paperis generally sold as principal or whether it's generally sold on an agency basis?

MR. BREINDEL: What period of time are we talking about?

Q In 1969 and the first quarter of 1970.

A It could be either way, but it wasn't for us -- it could be as principal or it could be as an agent. I had no way of knowing.

THE COURT: If you had known that it was sold by them as a principal, would that have been one of the things that would have caused you to withdraw it from presentation to a customer?

THE WITNESS: Not just that knowledge, no.

Q Would it have had any effect on your judgment?

A Not at thetime.

Q If you had known that Goldman, Sachs sold as a principal, it would not have affected your judgment?

A No.

Q Would it have affected your judgment if you had known that Goldman, Sachs was the only dealer in Penn Central commercial paper?

A No, exclusives were not unusual.

Q You made reference earlier tothe firm of Brown Bros. Harriman. I believe you testified that it would have been an alarm to you that would have sent you to the credit department if you found that Brown Bros. Harriman had removed Penn Central's name from its approved list.

Let me ask you this: if you also had known that Brown Bros. Harriman had a $2,000,000 unsecured line of credit available to Penn Central and that that lien was kept available and was finally taken down almost two months later, would that have changed your mind as to whether or not that was an alarm that should send you to the credit department?

A The general principle of Brown Bros. doing anything on that line would have been some notification to us to have it checked, but no knowledge was given to us.

Q And the fact that Brown Bros. was willing to lend its own money unsecured at the same time would make no difference?

A No. That is their business if they want to do it. That is their business, if they want to establish lines.

Q But the approved list is not their business?

A Yes, it is.

Q Irving Trust Company in New York, they were your correspondent bank, is that right?

A Correspondent and acting as agent for us.

Q Were you aware of whether or not Irving Trust had any banking relationship with Penn Central?

A No, sir.

Q As your correspondent bank, did they ever supply you with any information on any companies?

A No, sir.

Q Returning to the question of bank line coverage, is it your testimony that 100 per cent bank line coverage of commercial paper outstanding was the practice, is that right?

A General practice.

Q For what you call high quality companies?

A Yes.

Q Do you know whether or not General Motors Acceptance Corporation has 100 per cent bank line coverage, had at that time?

A I don't know.

Q You don't know?

A I don't know, sir.

Q Would you consider it a high quality company?

A Yes, sir.

Q How about Ford Motor Credit Company?

A The same thing.

Q And you don't know whether or not they had 100 per cent line coverage?

A That is true.

Q What about General Electric?

A What time are you speaking of?

Q 1969 and the first quarter of 1970.

A I have no way of knowing, no.

Q You don't know that?

A No, there was only one rating company at the time.

Q That response makes me think maybe you didn't understand the question. The question is only whether or not you knew, whether you knew whether or not General Motors Acceptance Corporation had a 100 per cent line coverage.

A No, sir.

THE COURT: You wouldn't get that information from NCO necessarily, would you, if you got it at all?

THE WITNESS: No.

Q How would you get that kind of information if you wanted it?

A Our senior people if they went directly to them to establish a line then would obtain it.

Q Did you ever inquire about bank line coverage?

A No, I did not. No.

Q And you never inquired of it of a dealer?

A I did not.

Q You did not?

A No.

Q In the course of all the transactions you handled for customers of the bank, you never asked a dealer what the line coverage on an issuer was?

A No, sir.

Q What about Sears, do you know whether Sears

Roebuck Acceptance Corporation had 100 per cent line coverage at the time?

A I don't know.

Q I take it you think that is a quality company, too?

A Yes.

Q The same with General Electric and Ford?

A Yes.

THE COURT: If Mr. LeMay wasn't the man to look into this stuff, it doesn't seem to me there is much point in asking him about these companies.

MR. GRAHAM: My point, and we can bring this out on our own case, Mr. LeMay testified that in his mind all quality companies had 100 per cent line coverage.

THE COURT: I understand that. I understand you are going to want to show that some didn't. But if he doesn't know, it doesn't get us nowhere. You haven't proven they did.

MR. GRAHAM: I think I am half-way there. A Goldman, Sachs witness will testify that none of these companies had anywhere near 100 per cent line coverage.

THE COURT: All I know is that he hasn't looked into it and it's not going to get us anywhere to ask any more questions on that.

Q Did you ever tell Goldman, Sachs that to your mind quality commercial paper had to have 100 per cent line coverage?

A No.

Q Could you refresh me, please. What was your testimony on the hypothetical question as to the use of proceeds of commercial paper? What did you say if you had known what the use of the proceeds was you would not have bought the paper, is that right?

A I had known?

Q Do you recall being asked about --

A I testified that commercial paper is used for short-term investments of 270 days or less and it's for those puposes.

Long-term investment lines of credit are exercised on other types of loans, but commercial paper is used for short-term investments. Also for the current working cash of the concerns. This is why they sell commercial paper. That is the reason for it.

3 Q Focusing on the second point, the use that the borrowing company makes of the money, would that use have made any difference to you in deciding whether or not to buy the paper?

A No. I had no way of knowing what they were doing.

Q You never asked?

A No.

MR. GRAHAM: I have no further questions.

REDIRECT EXAMINATION

BY MR. BREINDEL:

Q I believe you testified on cross-examination that you were generally aware that the purpose of the merger between the Pennsylvania Railroad and the New York Central was to reduce costs, is that correct?

A Generally speaking, yes.

THE COURT: If it didn't what would be the point, right?

THE WITNESS: That is right.

Q On your cross-examination I believe you testified that Mr. Fitzpatrick told you prime meaning quality, is that correct?

A Yes, sir.

Q When did he tell you that?

A Any time from when we first started discussing quality and prime paper, 1968, 1969. I don't remember just when.

Q Was this in connection with commercial paper?

A Yes.

Q On at least one occasion did Mr. Fitzpatrick use the term quality and prime interchangeably?

A Yes.

Q As of March, 1970, March 1, 1970, what prime commercial paper mean to you?

A Quality.

Q On March 13, 1970, in your discussions with Mr. Fitzpatrick, can you recall approximately how many commercial paper names you showed him, to use your terminology?

A We would always show at least three or four or more, if they were possible to obtain.

Q To the best of your recollection, as of this date, how many names did you show Mr. Fitzpatrick on March 13, 1970?

A Three or four.

THE COURT: Do you remember any of the other names?

THE WITNESS: At that time Avco was a seller, Chrysler Corporation was a seller, many of the larger houses were sellers. This is roughly 15,000 names you can get into.

THE COURT: You don't remember which ones ?

THE WITNESS: No. But we always showed a variety of names.

Q I believe you testified on cross-examination, Mr. LeMay, as to a line of credit that your bank had extended tc Sears, Roebuck & Company?

A Yes.

Q Do you recall if that was the Sears, Roebuck & Company or Sears, Roebuck Acceptance Corporation?

A I believe it involves both with lines established to both.

Q Do you recall what the purposes of this line of credit was?

A Many of the major corporations would establish lines with West Coast banks to supplement their commercial paper activity in that their inability to sell sufficient paper in the East or Mid-West in the course of the day and also on the West Coast then at the last moment they will exercise their lines with the banks on the West Coast to fill their needs for the day or cover their cash positions.

This is a normal practice and why many of these corporations have lines requests for those banks for that purpose.

MR. BREINDEL: No further questions.

RECROSS EXAMINATION

BY MR. GRAHAM:

Q Mr. LeMay, did you ever tell Goldman, Sachs that when you used the word "prime" you meant quality?

A Quality was a word used --

THE COURT: He only wants to know whether you told him that, no matter how much everybody understood it. Maybe the answer is, if you are not telling it, because everybody knew it, but did you tell them in so many words?

THE WITNESS: I don'e remember.

Q You don't remember ever having done that?

A No.

MR. GRAHAM: No further questions.

MR. BREINDEL: No further questions.

THE COURT: Thank you.

(Witness excused.)

MR. BREINDEL: In view of the hour do you want to start with a new witness, your Honor?

THE COURT: Yes. If we always do that, we would never finish.

MR. BREINDEL: Mr. Fitzpatrick.

HOWARD FITZPATRICK, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BREINDEL:

Q Where do you reside?

A 310 North Madison Avenue, Los Angeles. That is my business address.

Q Where do you reside?

A 175 North McAdam Place, Los Angeles.

Q Would you briefly give us your educational background?

A High school, graduate of U.C.L.A., Bachelor's Degree.

THE COURT: As a matter of curiosity, how did you get into this organization, which I understand supports Loyola University?

THE WITNESS: I inherited it by death. I was very lucky to get into this.

THE COURT: Literally somebody in the family --

THE WITNESS: No, I inherited it from the person who died and I had been on the board, so I got the top spot.

Q At U.C.L.A. or elsewhere did you ever take any courses in finance or investments?

A No.

Q Would you briefly give us your occupational background upon graduating from U.C.L.A.?

A Upon graduation I immediately went to Midshipmen School, World War II was on, I became a naval officer and spent about five years in the Navy. That is throughout World War II.

THE COURT: You must be about my age.

A (Continuing) After the Navy I got into the painting industry, and I havebeen in the painting contracting business, industrial-commercial painting contracting ever since.

Q Can youtell us the name of your business?

A J.P. Carroll Company.

Q Is that a corporation?

A Yes.

Q Is its stock privately-owned?

A Privately-owned.

Q In what business is J.P. Carroll business engaged in?

A Industrial painting.

Q Are you now president of J.P. Carroll Company?

A Yes.

Q For how long a period of time have you been president?

A Since 1968.

Q From 1968 through March of 1970 had J.P. Carroll Company made any investments in the short-term money market?

A No.

Q Had you personally during this period of time?

A No.

Q Up to March 13, 1970, what investments, if any, had you made personally?

A Some minor common stock investments.

Q Did those minor common stock investments involve the Penn Central, New York Central or Pennsylvania Railroad Companies?

A No.

Q During the period from September, 1969, through March, 1970, did you read any newspapers or magazines regularly?

A Yes.

Q What newspapers and magazines did you read?

A The Los Angeles Times, Time Magazine and the Wall Street Journal.

Q Tell us what kind of business entity is University Hill Foundation?

A It's a non-profitable charitable organization.

Q Is it a California corporation?

A Yes.

Q Was University Hill Foundation previously known as the Loyola University Hill Foundation?

A Yes.

(Plaintiff's Exhibit 8 marked for identification.)

Q Mr. Fitzpatrick, can you identify Plaintiff's Exhibit 8 for identification for us?

A These are the articles of incorporation of the University Hill Foundation.

THE COURT: Under the name of Loyola at that time?

THE WITNESS: Loyola University Foundation, yes.

THE COURT: What is the relevance of the certificate of incorporation?

MR. BREINDEL: The articles of incorporation set out the authority of Mr. Fitzpatrick as president to make investments.

THE COURT: Nobody is disputing his authority to make them, are they?

MR. GRAHAM: No, it's not disputed, your Honor.

MR. BREINDEL: I offer it then in evidence.

THE COURT: I don't think you need to. I don't want to be fussy, but you shouldn't clutter the record.

MR.BREINDEL: It shows the purposes for which the Foundation was incorporated.

I offer it in evidence.

MR. GRAHAM: Objection to the relevance.

THE COURT: I will accept it, but I don't see what this has to do with the case.

(Plaintiff's Exhibit 8 received in evidence.)

Q For how long a period of time, Mr. Fitzpatrick, have you been president of the Foundation?

A I was elected president in early 1969.

Q For the period March of 1970 what were your duties as president of the Foundation?

A To administer the day-to-day affairs of the Foundation and make investments.

Q As of March, 1970, approximately how much of your time was devoted to your duties as president of the Foundation?

A Approximately 10 hours a week.

Q Of that 10 hours how much time, if any, was devoted to caring for the investments of the Foundation?

A The actual mechanics of investing, I would say an hour a week.

Q At this point in time did anyone else have the responsibility for making the Foundation's investments?

A No.

Q In March of 1970 where was the Foundation located?

A 310 North Madison Avenue, Los Angeles.

Q Is that the same address as your business?

A The offices of J.P. Carroll Company, the same address.

THE COURT: Did they charge you rents?

THE WITNESS: No

Q In March, 1970, did the Foundation have any full-time employees?

A No.

Q Did it have any part-time employees?

A Yes, my secretary at J.P.Carroll Company devoted a certain amount of time to the mail and routine things in the Foundation.

Q As at March, 1970, what was the Foundation's relationship with the Union Bank?

A We were a depositor, a customer.

Q Approximately when had this relationship started?

A Back in the mid-fifties.

Q Other than holding the money for you, did you ever call upon Union Bank for any other services?

A Yes, we used their investment department to make our investments.

Q When you say "make our investments," what do you mean by that?

A To purchase money instruments.

Q As your agent?

A As our agent, yes.

Q Was there any particular reason for this?

A Convenience. We had money in the bank. It was very convenient to have them make the purchases and handle all the paperwork and upon maturity make the collections.

Q Did you compensate the Union Bank, that is, the Foundation, for performing these services?

A No.

Q During the period of 1969 and through March, 1970, what individuals did you deal with at the Union Bank in connection with your investments, that is, the Foundation's investments?

A Noel LeMay.

Q When did you first meet Mr. LeMay?

A The latter part of 1968 or early 1969, I am not sure.

Q Did you have a social relationship with Mr. LeMay?

A No.

Q Had you met him personally during this period?

A Yes.

Q Approximately how often?

A Twice.

Q Most of your contact with him was --

A By telephone.

Q As president of the Foundation by March, 1970, had you developed a routine procedure which you used in making commercial paper purchases?

A Yes.

Q Would you tell us what that procedure was?

A When we had some funds to invest I would contact at least two of the local banks, through investment departments that is, and get a rundown of what was available and on that particular day as to the company, the rate, the maturity,and take the information I got from two or three banks and come to some conclusion and then I would order whatever I decided was the best investment at that time.

Q At that time how would you decide which bank to call?

A It would depend on which bank had some investment that was maturing. When that happened I would talk to that bank and roll over the funds.

THE COURT: You called one of two banks, is that what you are saying, or you called two banks?

THE WITNESS: His question was on how I would decide which bank to make the investment in.

THE COURT: His question implies that you didn't call both. Did you have two banks you did business with or more than one?

THE WITNESS: We had four.

THE COURT: Of the four, when you made a call did you make the call to two?

THE WITNESS: Yes, I would make the call to at least two banks, one in addition to the one where the money was maturing in.

THE COURT: In addition to that one?

THE WITNESS: Yes.

THE COURT: That would be three.

THE WITNESS: Many times it was, to get cross-examination.

Q As president of the Foundation by March 1, 1970, had you developed a criteria or criterion for the purchase of commercial paper?

A Yes.

Q What was that?

A No. 1 was safety, quality. In the event we were dealing in commercial paper we required it would be prime, which meant to us the ultimate in safety.

The other criteria would be, of course, interest rate and maturity dates.

Q At what point in time had you developed this criteria?

A In 1968.

Q Did that remain true through March, 1970?

A Yes.

Q Prior to March 13, 1970, did you ever have occasion to discuss the purchase of commercial paper with Mr. LeMay?

A Yes.

Q Were all your discussions with Mr. LeMay in connection with his capacity as an officer of the Union Bank?

A Yes.

Q And they were always for the Foundation and not yourself?

A Yes.

Q Do you recall the substance of your discussions involving commercial paper with Mr. LeMay prior to March 13, 1970?

A Yes.

Q Would you tell us those discussions?

A I would ask him what the availability was in prime commercial paper, banks' acceptances, certificates of deposit. I would take what he said back to me and make a decision.

Q Prior to March 13, 1970, had you advised Mr. LeMay in these discussions that when you purchased commercial paper you only wanted prime commercial paper?

A Absolutely.

Q Did Mr. LeMay evidence an understanding of this?

A Yes.

Q In your discussions with Mr. LeMay what did you mean by the word "prime"?

A The best there is.

MR. GRAHAM: Objection. That is the state of mind. The question is whether Mr. LeMay --

MR. BREINDEL: A question of intention may be involved.

THE COURT: The question you are now asking is what he conveyed to LeMay. I know that to him prime meant the ultimate safety.

THE WITNESS: Correct.

Q In your discussions with Mr. LeMay did you ever use such terms in addition to prime --

THE COURT: Please don't lead him unless necessary.

Do you remember what you said to Mr. LeMay besides the question of what just prime involved?

THE WITNESS: The best quality is all we wanted to talk about.

THE COURT: You told him that?

THE WITNESS: I absolutely did, yes.

MR. GRAHAM: Was the testimony that he said that to Mr. LeMay?

THE COURT: Yes, all they wanted was the best quality.

Q In your discussions with Mr. LeMay involving commercial paper prior to March 13, 1970, did Mr.LeMay ever use the term "prime"?

A Yes.

Q In what connection did he use it?

A I would ask him to provide me a list of prime papers, and he would come back and say these are the primes, X,Y,Z Company, so-and-so, and any other thing we might be talking about. Other types of instruments, that is.

Q Mr. Fitzpatrick, on March 13, 1970, did you have occasion to discuss commercial paper with Mr. LeMay?

A Yes, I did.

Q What was that occasion?

A We had $600,000 maturing in the Union Bank at that time, so I asked him to get me a list of candidates, if you will, for investment in the prime category.

Q Was this in a telephone conversation?

A Yes, it was.

Q Did you initiate the conversation?

A I did.

Q In this telephone conversation with Mr. LeMay tell us what you said to Mr. LeMay and what Mr. LeMay said to you.

A I said we have $600,000 available. I want to invest it, would you please find out what is available in the marketplace today and give me the pertinent information.

He came back to me and I don't recall the particular ones, but Penn Central was one of the prime commercial papers that he mentioned along with others. He gave me the rate. I had conveyed to him that we were thinking in terms of about six months.

15 The Penn Central more or less fit that time frame and the interest rate, as I recall, was 8-1/2, which was good. I told him to buy $600,000 worth of Penn Central.

Q You have given us the substance of two telephone conversations, is that right?

A Yes. I called him. He called me back with the information.

Q If you go back, just limit yourself if you would to the first telephone conversation with Mr. LeMay on March 13, 1970.

A I called Mr. LeMay and told him I had $600,000 available and for investment and I asked if he would find some prime papers that I could consider. He said he would. I told him to get the pertinent information. I was thinking in terms of around six months.

Q Did Mr. LeMay then call you back?

A Yes, he did.

Q Would you now tell us what you said to Mr. LeMay and what Mr. Lemay said to you in the second telephone conversation on March 13, 1970?

A He called me back and said, "I have these prime commercial papers available for investment."

THE COURT: Do you remember any other names besides Penn Central?

THE WITNESS: I wouldn't stake my life on it. Avco does have a little bit of back-of-the-head recollection.

Q Do you recall any of the names other than Penn

Central?

THE COURT: That is what he just said, he can't tell, possibly Avco.

Q Do you recall how many names Mr. LeMay said were available?

A I think four.

Q In your past dealings with Mr. LeMay how many names did he generally make available to you?

A Three or four.

Q Can you recall him ever making to you available more than four names when you wanted to buy commercial paper?

A No.

Q You made the decision as to which of the available names to select?

A Yes, I did.

Q And what did you tell Mr. LeMay, if anything, with respect to that decision?

A I said that Penn Central sounds great to me. My gut reaction was it's a huge industrial company in the country and as safe as the U.S. Government is, what I said at the time. I felt this would be a good decision.

THE COURT: You may have been right.

A (Continuing) And I instructed him to buy the

600,000 worth.

THE COURT: I think now that we have just made the purchases, this might be a good time to break for lunch. Be cak here at 2 o'clock, gentlemen. We will go to around 4.30.

(Luncheon recess.)

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AFTERNOON SESSION

2.00 P.M.

HOWARD FITZPATRICK, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. BREINDEL:

Q Mr. Fitzpatrick, I believe that prior to the lunch break you had testified that on March 13, 1970, Mr. LeMay advised you of three or four names of commercial paper issuers that were available on that date and you then selected Penn Central, is that correct?

A That is correct.

Q Can you tell us what factors led to your decision to select the Penn Central rather than one of the other papers made available to you by Mr. LeMay?

A Principally is the image quality of the size of Penn Central and that meant safety to me, the rate was favorable, and their maturity situation fitted our requirements.

Q On March 13, 1970,were you relying on the Union Bank or Mr. LeMay to exercise its judgment in connection with this transaction?

A In selecting prime commercial paper, yes, I was.

THE COURT: What do you mean by the word

"selecting"?

THE WITNESS: Offering me a list to choose from.

Q Mr. Fitzpatrick, as of March 13, 1970, were you aware of the fact that Penn Central commercial paper was being sold by a broker as principal rather than as agent?

THE COURT: I equate this with having asked this witness exactly the same questions that were asked of the last witness.

MR. BREINDEL: I simply want to establish, and we may have to establish, that Mr. Fitzpatrick was not aware of the facts we allege were omitted. If we can stipulate that --

THE COURT: I understand the problems of proof if there are any disputes about them. In the first place, I question whether there is any dispute, and if there is, it seems to me we can still at least proceed subject to cross-examination and redirect, if necessary, on the basis of asking this witness whether he heard you ask the questions of Mr. LeMay and whether he knew any of the facts about which you asked.

Is that agreeable? I won't ask you to take the responsibility. I will go that way and you cross-examine if you want to.

MR. GRAHAM: The only caveat would be that we still have an objection based on the fact that many of the facts are not in evidence and many will not be able to be proven.

THE COURT: Of course. It goes without saying that, first of all, whatever is subject to connection with one witness remains subject to connection with the second. I will admit things subject to connection. You are free to point out to me on the record at any time you wish that there has been no foundation, just to protect your record. But we don't need to make an issue of it.

Q Mr. Fitzpatrick, you were present in this courtroom this morning when Mr. LeMay testified?

A Yes.

Q Did you hear me ask him a series of questions as to whether he was aware of certain facts as of March 13, 1970?

A Yes.

Q Did you have knowledge of any of those facts that I asked Mr. LeMay about on March 13, 1970?

A No.

MR. BREINDEL: No further questions, your Honor.

CROSS EXAMINATION

BY MR. GRAHAM:

Q Mr. Fitzpatrick, choosing Penn Central commercial paper on March 13 was your sole responsibility, is that correct?

A Yes.

Q And you have had no training in commercial paper paper credit analysis?

A No.

Q You have had no credit analysis training at all of any kind, is that right?

A No.

Q The question was, is that right, you have had no training?

A Yes, that is correct, I have had no training.

Q Have you had any experience in credit work at all?

A No.

Q Have you had any financial analysis training of any kind?

A No.

THE COURT: What about in your own business, Mr. Fitzpatrick?

THE WITNESS: Yes.

THE COURT: Are you called upon whether to grant credit to customers or not in your business?

THE WITNESS: We do business with large general contractors whose credit is very well established. To get into what you are asking, are we going to do business with this person or not, we really don't get into that.

THE COURT: So you just do whatever your general contractors ask you to do?

THE WITNESS: Yes.

Q Have you ever bought commercial paper other than for University Hill Foundation?

A No.

Q You testified earlier this morning about the Penn Central transaction itself on March 13, 1970. In your testimony were you telling us what you specifically recalled regarding what happened that day or were you telling us about your general practices which must have applied that day?

A It's difficult to answer. I was telling you general practice, but I do have specific recollection of the Penn Central transaction. I do recall that.

Q What is it that makes it stick in your mind?

THE COURT: No.

MR. GRAHAM: By the time June 23 rolled around --

THE COURT: I shouldn't chuck it, but I am sure some things about Penn Central stick in his mind.

A To answer your question, the amount was one of the largest amounts we ever bought. Mind you, we weren't a multi-billion dollar corporation.

Q This was one of the larger transactions?

A Yes. I do remember $600,000. It sticks in my mind.

Q You made no special analysis or asked any special questions because of that large amount?

A No.

THE COURT: Can I ask what kind of items UHF, as I am calling it in my notes, had put its money into before these Penn Central notes?

THE WITNESS: Other issues of commercial paper, bankers' acceptances, certificates of deposit.

THE COURT: You had bought commercial paper before this?

THE WITNESS: Yes, on many occasions.

THE COURT: How many occasions would you estimate?

THE WITNESS: 25 or 30.

Q Had you also bought government securities of any kind, Treasury Bills or Notes?

A I don't remember.

THE COURT: When I said or when you answered my question by saying that you bought commercial paper 25, 30 times, were you referring to the period in which you were in control of UHF or head of UHF?

THE WITNESS: My control, yes.

Q Going back to March 13, the day of the Penn Central paper, do you recall whether Mr. LeMay said anything to you about Penn Central or did he just mention that name among others?

A He mentioned that name among others. I, in my initiating the thing, had asked for a list of prime candidates. When he came back he offered me a list of, I believe, four, but he didn't say anything special.

Q He said nothing about Penn Central or about any of the other names?

A No.

Q And that was his usual practice?

A Yes.

Q And you obtained no financial information from Mr. LeMay, is that correct, about Penn Central?

A That is correct.

Q And didn't get any information from any other source either?

A No.

Q Is that true of all the issuers of which commercial paper was offered you that day? In other words, you did not ask about any of the other names available?

A I did not, correct.

Q At the time, that is in the end of 1969 and up to March, 1970, had you heard of Moody's Transportation Manual?

A No. I heard of Moody's but not their transportation manual.

Q What did you know about Moody's at that time?

A Just that it was a financial service.

Q And provided the statistical information on a variety of companies?

A In my mind, bonds. I don't know why. I thought it was a rating service on bonds.

Q Was it your understanding that in addition to a rating that there was information supplied about Moody's?

A No, I did not know that.

Q You didn't know that?

A No.

Q What about Standard and Poor's?

A I had heard of Standard and Poor's as being a rating service.

Q And you had no knowledge that they made available statistics on various industrial companies, earnings, various ratios?

A Not those details, not at all.

Q You didn't know about that?

A No.

Q Do you read the Wall Street Journal?

A Yes.

Q Do you try to read it every day?

THE COURT: Talking about 1970?

Q During 1969, yes.

A My company, J.P. Carroll Company, is a subscriber to the Wall Street Journal. I would like to read it every day. We get it every day and pass it around the office. Sometimes I read it every day of the week and sometimes no days of the week. Hit and miss.

Q As it's passed around, does it come to the president's desk fairly early?

A It comes across my desk first. That doesn't necessarily mean I read it.

Q When you are there do you read it when you get a chance?

A Right.

Q Would you look,please, at the newspaper articles shown to Mr. LeMay this morning -- and for the record these are in evidence as Exhibits H, A-211, AB, A-195, A-187 and

A-180.

Without reading the articles, would you glance at the headlines of the articles and tell me whether you recall having read any of those at the time.

A No, I don't recall having read these.

Q Do you recall being generally familiar with the fact that Penn Central had a declining earnings trend?

A No, I don't.

Q Do you remember reading anything about Penn Central in the newspapers during that period?

A Not specifically, no.

Q Apart from whether you remember a specific article, do you recall that there was news in the papers about Penn Central?

A No.

Q You didn't have any information from any source about Penn Central's earnings?

A No.

Q Or their cash situation?

A No.

Q You didn't know that they passed two dividends in a row by March 13, 1970?

A No, I did not.

Q In fact, you didn't have any information about

Penn Central at all, did you?

A No.

Q Not from any source?

A No.

Q What was it then that led you to believe that Penn Central had, as you said earlier, an image of quality? Where did that image come from?

A Just general information as a huge company. Ever since I had been a boy I had heard of the huge Pennsylvania Railroad.

THE COURT: Where did you grow up?

THE WITNESS: In the West. My family was from New York, New Jersey. I heard my father talking about the Pennsylvania Railroad. I always had an image of it as being a huge, huge corporation.

Q Is that the only basis for your image that you had in your mind about this being a quality corporation?

A Well, I guess by osmosis I obtained impressions. They owned a lot of properties, a lot of real estate, I heard.

THE COURT: You were right.

THE WITNESS: I just thought that they were enormous and one of the biggies.

Q Was that the basis on which you testified earlier that Penn Central was equal to the government, is that what you said?

A Yes.

THE COURT: Did your father ever tell you the bigger they are the harder they fall?

THE WITNESS: I wish he had, your Honor, but he didn't.

Q That was the only basis for your conclusion that Penn Central was as good as the government, right?

A Yes.

Q You knew Penn Central wasn't backed by a taxing authority the way government securities were, though, did you not?

A What was that question?

Q You knew Penn Central's credit was not backed by a taxing authority the way Treasury Notes or Treasury Bills are, isn't that right?

A Not specifically did I know that, but neither did I not know it.

THE COURT: You didn't assume that it was?

THE WITNESS: Yes. Thank you.

Q Did you at the time know that commercial paper was an unsecured obligation?

A Yes.

Q I suppose you knew that companies on occasion failed to pay their debts?

A I suppose I knew that. I never heard of anybody defaulting on commercial paper, though.

Q But you did know that companies' unsecured debts were sometimes not paid?

A I suppose so.

Q Were you aware that the rate on commercial paper was higher during that period than the rate on government securities?

A I can't positively say that I had made that kind of analysis.

Q Wasn't it partly on the basis of the high rate that you chose to by commercial paper?

A Yes.

Q Is it a fact that one reason you chose Penn Central in particular was because its rate was higher than many of the other paper being offered that day?

A I can't particularly recall what the other rates were, but I would have to believe that it probably was maybe a quarter of a point higher, yes. It would have been the highest at that time.

Q Did you ever perform any kind of financial analysis for any of the companies whose paper you were purchasing?

A No, I did not.

Q None whatsoever?

A No.

Q You were relying on the judgment of the bank to make that analysis, if necessary?

A Yes.

Q You expected that paper being shown to you by Union Bank had Union Bank's stamp of approval on the paper?

A I expected that Union Bank would offer me a selection of prime rated commercial paper. Which is what I would request. Now if you want to say that that puts their stamp of approval on it, well --

Q Do you recall using that phrase?

A Stamp of approval?

Q Yes, sir.

A No, I don't.

THE COURT: Did you ever ask the bank to give you its own independent judgment with regard to quality of any paper that you bought?

THE WITNESS: No, I did not.

Q Do you recall testifying in a deposition in these proceedings on October 12, 1972?

A Yes.

Q During the course of that were you asked this question and did you give this answer, page 20 --

THE COURT: Is this Mr. Fitzpatrick's only deposition?

MR. GRAHAM: Yes, your Honor.

THE COURT: Page 22?

MR. GRAHAM: Page 20, your Honor.

Q "Q I believe you testified that you didn't look to the bank for any investment advice in connection with the Foundation's purchases of commercial paper, is that correct?

"A Yes, our relationship was one that we had implicit belief and trust in the capability of the Union Bank and their investment department and felt that knowing the parameters of our requirements that if they offered us A, B, C and D, whatever, that they wouldn't offer it to us unless it was gilt, so to that extent we didn't go to the in-depth thing like if they said Y,Z Company is available at 8-1/2, 8-1/4, we didn't say send me a prospectus, send me all the detail. We just felt if they said this was available, they wouldn't offer it to us unless they put their stamp of approval on it, so to speak. So we felt we had a lot of faith in what they offered us. If they handled it, it was good. That is the way I felt."

Do you recall being asked that question and giving that answer?

A I didn't recall the particular phrase "stamp of approval," but I agree that this was the sense of my response, yes.

Q Is it your testimony today that you expected the bank to put its stamp of approval on commercial paper being shown to you?

A Yes.

Q And you relied on that?

A Yes.

Q You also testified in the answer that I just gave you that you expected the bank would not show you paper unless it was gilt.

A Yes.

Q Do you recall what you meant by that?

A Gilt-edged, very high quality.

Q And you relied on the bank to perform that function for you, too, is that correct?

A Yes.

Q You did not, however, expect the bank to provide you with financial information about the issuers, is that correct?

A That is correct.

Q Incidentally, during the period up to March 13, 1970, when you were purchasing commercial paper, did you ever speak directly to Goldman, Sachs?

A Never.

Q Did you ever speak directly to any other dealier?

A No.

Q Or to any other issuer directly?

A No.

Q You dealt only through Union Bank and the other banks with which you were in contact?

A Yes.

Q Did you know Goldman, Sachs was involved in the commercial paper sale prior to the completion of the transaction?

A No.

Q And you obtained no information from Goldman, Sachs about the financial condition of Penn Central?

A No.

Q At any time that you were purchasing commercial paper did the bank ever forward to you information that had been given it by Goldman, Sachs?

A No.

Q And you never asked for any information of any kind of the bank?

A No.

Q And again that was because you felt the bank was showing you only gilt-edged securities, is that right?

A That is correct.

Q Did you ever convey to the bank any standard or criterion of any kind apart from the fact that you wanted prime rated paper?

A No, prime in the sense of complete safety.

Q. You never told them that you wanted any particular bank line coverage, is that right?

A Yes, sir, that is correct.

Q And you had no requirements in terms of current ratios?

A No.

Q Or depth equity ratios?

A None.

Q Or any particular earnings requirement?

A None.

Q You don't know, do you, what Union Bank told Goldman, Sachs with regard to your criteria?

A No.

Q And you yourself never instructed Union Bank to tell Goldman, Sachs anything?

A I just instructed them to buy or to suggest prime paper. I would assume that they went the next step further. I didn't hear the conversations.

Q During this period up to the date of purchase had you heard of the National Credit Office?

A No.

Q Had you heard of Dun & Bradstreet?

A Yes.

Q You didn't know that National Credit Office rated commercial paper?

A No, I did not.

Q Did you know that any company was in the business of rating commercial paper?

A No.

Q Mr. LeMay was in what department of the bank, if you recall?

A The investment department.

Q Was it your understanding at the time that people in Mr. LeMay's department were making whatever investigation was necessary, checking into these companies whose names he was showing you?

A His department alone, the investment department?

Q Let's start with his department. If you want to include the credit department,too, of the bank, that is okay.

A I considered the Union Bank as a whole and that they would do that job. I wouldn't, in my mind, think it's a credit department or the investment department, but the

Union Bank as such.

Q You expected they were doing whatever checking was necessary of the companies?

A That is correct.

Q And you assumed the bank would get whatever information it needed to make the judgment you expected them to make?

A Yes.

Q Did you assume at the time that all the information that they were collecting was favorable information about each of these companies?

A I didn't make any assumption on that.

Q You didn't know one way or the other whether they would collect both good and bad information?

A You are talking about the names, the issues that were presented to me specifically?

Q Right.

A I would have to assume that if they presented them to me they only had favorable information. If they had any unfavorable, I would not have expected them to even offer it.

Q You assumed if there was any unfavorable fact about a company the size of Penn Central that paper would not be shown to you?

A Any paper, Penn Central or any other. It would not be shown to me.

Q If there was anything at all that was in any way unfavorable, the paper would not be shown to you?

A Yes.

MR. GRAHAM: No further questions.

REDIRECT EXAMINATION

BY MR. BREINDEL:

Q On March 13, 1970, what if any judgment were you relying on the Union Bank to exercise in connection with your purchase of commercial paper?

A To acquire prime commercial paper.

THE COURT: To do what?

THE WITNESS: To acquire a list to present to me of reliable, safe commercial paper.

Q Were you relying on them to exercise their judgment so that everytime on the list of names they presented to you was a prime name?

A Yes.

Q Were you relying on them for anything else?

A Not that I recall.

Q I believe you testified that you assumed it was your assumption or it is your assumption that if the Union Bank was aware of any unfavorable fact they wouldn't show the commercial paper to you?

A That is correct.

Q Was that your assumption at the time or is it your assumption now or both?

A Both.

MR. BREINDEL: Thank you.

THE COURT: Thank you.

(Witness excused.)

MR. BREINDEL: Your Honor, we have a number of documents to introduce at this point.

THE COURT: Have you shown them to counsel?

MR. BREINDEL: They are all in our pre-trial order.

THE COURT: That doesn't mean they agree to the admission of them. I want to know if there are any objections to any of them.

MR. MANEY: We do have objections to some, but certainly not all.

THE COURT: How do you want to proceed? Do you want to go one by one and specify whether you have an objection or what?

MR. MANEY: If I understand it, Mr. Breindel is offering everyone of his exhibits.

THE COURT: Is that right?

MR. BREINDEL: No, there are a few we are not offering.

MR. MANEY: I can quickly, if he just gives me a number, tell him whether I have an objection.

THE COURT: Can I ask you to spend five minutes together as to what you are going to put in and crystallize that as to which you have objections and I will rule on the objections. I will be ready for you whenever you want.

(Recess.)

MR. MANEY: Your Honor, there are two categories of documents in addition to those which are offered without objection and those on which there will be objections. There are a group of documents which are known generically in this case as blue sheets primarily because the original of each of these sheets was on blue paper. They are internal memoranda within Goldman, Sachs. Our position, your Honor, is that they contain really two levels of hearsay.

THE COURT: Are they offered for proof of contents?

MR. MANEY: We have no objection to the first level. We understand they are business records. As to the second level of hearsay, since they report in many instances conversations with people who had no duty to report the author of the memorandum, that if they are offered to prove only that the statement was made, we have no objection. If the Court accepts it with that limitation, they may be received without objection. If they are offered to prove the truth of what was said to the author, then we would object.

THE COURT: What position does the plaintiff have? First of all, do you offer these documents as proof of the statements made by the persons who have no duty to report to the maker of the report, have I got it right?

MR. MANEY: Yes, sir.

MR. BREINDEL: Without going through each one individually, your Honor, there are some which we do. It's our position under the rules that hearsay within hearsay is admissible if we can show an appropriate exception for the hearsay within a hearsay.

THE COURT: All right. Are we all thoroughly acquainted with the new rules?

MR. BREINDEL: Mr. Aronson is.

THE COURT: Do you want to give me an example, Mr. Breindel, of the kind of thing you think is admissible and the authority for its admissibility?

MR. BREINDEL: Plaintiff's Exhibit 10, your Honor, is a blue sheet. Here we have Mr. Rogers of NCO telling Goldman, Sachs of his concern over the sharply-reduced earnings announced in the newspaper.

THE COURT: Right.

MR. BREINDEL: Well, we certainly want this admissible to establish that that is exactly what Mr. Rogers said.

THE COURT: Can't you call Mr. Rogers?

MR. BREINDEL: He is deceased.

MR. MANEY: We are not objecting to it for that purpose.

THE COURT: Is this one of the items you do object to in part?

MR. MANEY: Yes.

THE COURT: Tell us what part you object to here.

MR. MANEY: Your Honor, this particular sheet is not the best example, but if what Mr. Rogers has recorded as having said is not objectionable in our view if offered to demonstrate that Mr. Rogers said it.

THE COURT: I understand that.

MR. MANEY: If it's offered to show that what Mr. Rogers said was the truth, we do object.

THE COURT: I understand that, too.

Do you understand that, Mr. Breindel?

MR. BREINDEL: Mr. Rogers is quoted here as saying that as a result of comments he would continue to carry Penn Central Transportation Company as a prime name. We are offering that for the truth of that statement.

THE COURT: Mr. Maney is not objecting to Mr. Rogers' statements, which do not -- well, that one I wouldn't think you object to.

MR. MANEY: May I give a different example. We don't even have to look at the documents. There is a memorandum, Plaintiff's Exhibit 12, which records two Penn Central officers as advising the Goldman, Sachs representatives that they did not think they could get additional bank lines at that time. The testimony of the Goldman, Sachs witnesses is they didn't believe them, that in fact they thought they were negotiating to save expenses. That is precisely the kind of statement where we want the evidence perfectly admissible to show that the statement was made but not that it was true.

THE COURT: You mean you would agree that it was admissible to show that they said that they thought they couldn't get it, but not to show that they really thought they couldn't get it?

MR. MANEY: Either they really thought it or it was true.

THE COURT: They didn't say they could, they only said they thought they could.

What is your exception on that one?

MR. BREINDEL: It's our position that this Penn Central had a duty to tell its broker-dealer, its exclusive dealer in commercial paper, of its findings. They had a duty to report this to them.

THE COURT: Under the Business Record Rule it was a duty statement, is that what you are relying on?

MR. BREINDEL: Yes, and it's also an admission against interest in behalf of Penn Central.

THE COURT: Penn Central, of course, is not a party to this case and I don't know that it's an admission against interest otherwise or not. Perhaps there is going to be a separate wrinkle to each one of these and it's going to be difficult to establish a general principle. I guess what we better do is take up those that are objected to one by one and I will rule on it.

Why don't you put all those that are not objected to on the record. I can rule on the others either now or at such time as you want to put them in. You should put them in before you rest.

MR. BREINDEL: Let me first put in the ones that are not objected to. There is no need to mark them now.

THE COURT: The following exhibits are deemed marked in evidence without objection.

MR. BREINDEL: 5, 6, 7.

MR. MANEY: May I suggest that the documents limiting the instruction may be received in evidence subject to subsequent ruling by the Court on this point. It's not a point that would hold up the continuation of the trial.

THE COURT: It will be in evidence for some purposes, anyway?

MR. MANEY: Yes.

MR. BREINDEL: Let's put all those together.

MR. MANEY: To be offered in evidence would be Exhibits 10 to 13 --

THE COURT: The ones to which you are requesting a limiting order?

MR. MANEY: Yes.

10 through 13, 19 through 23 --

THE COURT: These are inclusive, I assume.

MR. MANEY: Yes, your Honor.

25 through 30, inclusive, 32 to 35, inclusive, 37 through 39, inclusive, 67, and that is it, your Honor.

THE COURT: All right. Do you want them, Mr. Breindel, to read the list of exhibits, the whole list of exhibits which is offered in evidence including this list, so we will know on the record precisely what you are after.

MR. BREINDEL: The other exhibits to which there are no objections are 37, 38, 39.

THE COURT: I am confused. I was just told there are objections to those. Furthermore, you started your list originally with 5. Can you read me everything but the numbers Mr. Maney just read.

MR. BREINDEL: Yes, I am sorry.

14, I believe there is an objection to.

THE COURT: We are not on the same wavelength. Mr. Many told me the ones on which he objects, but he is willing to have them in evidence subject to a limiting rule. Are there any objections --

MR. MANEY: There are a number of exhibits to which we object to in general.

THE COURT: All right. Is this category now as to which there is general objection --

MR. MANEY: Perhaps to assist we should read off the additional exhibits as to which we have no objection whatsoever.

THE COURT: That is what I am shooting for to begin with.

MR. MANEY: My notes say 42, 53 through 57, inclusive, 59, 60, 63 through 66, 68, 75, 76, 78, 79, 83, 84, 87, 96 through 98, 114, 119, 121, 122, 127 and 128. There are two exhibits, your Honor, as to which we do not object subject to, if I may say, correction by a better exhibit.

19 THE COURT: You mean a better copy?

MR. MANEY: No, your Honor, these are Exhibits 71 and 117, which were compilations made by hand early in the discovery in this case. Defendant is offering an Exhibit CU, which is a computer run formulated after a considerable amount of programming in this case. We believe it is more accurate to the extent there is any discrepancy.

THE COURT: I am going to consider 71 and 118 admitted now --

MR. BREINDEL: 117, your Honor.

THE COURT: 117, is it?

MR. MANEY: Yes, your Honor.

THE COURT: Admitted now subject to whatever influence on their probative value the later exhibits would have.

MR. MANEY: Would your Honor like me to read the list of exhibits as to which we do object?

THE COURT: In a moment. First I want to state for the record that all of the exhibits heretofore discussed to which defense counsel has indicated either that it has no objection or that it has no objection but requests a limiting order as indicated, and Exhibits 71 and 117, are admitted in evidence.

Now I would like to get the numbers of the exhibits to which there is a general objection.

MR. MANEY: There will be numbers missing. A number has been withdrawn by plaintiffs, so these will not be all of the numbers.

14 through 18, inclusive, 24, 36, 40, 41, 44 through 52, inclusive, 58, 61 and 62, 70, 73 and 74, 81 and 82, 88 through 90,inclusive, 92 and 93, 100 through 103, inclusive, 105 through 108, inclusive, 110, 111, 113, 115, 124 and 125, 129, 134 and 135.

THE COURT: Let me ask you this as a matter of mechanics: how long do you think it will take me to rule on these? Are there large groups to which the same objection applies or how many issues do I have to decide?

MR. MANEY: I believe the largest single group relates to a single question of law, and that is documents that are dated subsequent to the purchase date in issue. I think that is probably the largest single group of documents.

THE COURT: I am wondering whether the argument as to the objections to the determination is going to take us ten minutes, a half-hour, or an hour, because depending on your estimate of that, I would suggest either that we go in the robing room and settle it where I can relax and smoke a pipe or go up to chambers, which is more comfortable, if it's going to be a long one.

MR. BREINDEL: I think it will be lengthy. As to the last objection based on the fact that a document is dated after March 13, I don't think there is a categorical answer whether or not it should be admitted. I think you have to look at each one and judge its relevance. For reasons like that --

THE COURT: I may have to determine each one to determine whether you are right as to whether I have to look at each one.

I don't know if you have any witnesses.

MR. MANEY: I assume Mr. Breindel will rest after the exhibits.

THE COURT: Is this a big logistic problem to take up the materials? If it is, we can take it into the robing room.

MR. MANEY: May we excuse the first defendant witness then for the balance of the day?

THE COURT: Yes. I will see you in chambers as soon as you can get there and we will go on from there.

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UNIVERSITY HILL FOUNDATION

- v s - 71 Civ. 1166

GOLDMAN, SACHS & CO.

October 28, 1975

[3:00 p.m.]

- - -

[Conference in chambers.]

THE COURT: Let's start with those in which the objection is general and in the order of their numerical order, starting with No. 14. I assume I will given a copy of the exhibit to look at in each case.

MR. BREINDEL: Plaintiff's Exhibit 14 is a blue sheet dated March 23, 1970 prepared by Robert Wilson, head of Goldman, Sachs' Commercial Paper Department, referring to a conversation with Mr. O'Herron of Penn Central.

THE COURT: What is the objection, Mr. Maney?

MR. MANEY: This deals with a conversation concerning financial matters of Penn Central that took place ten days after the purchase and we think there may be certain events that occurred after the purchase that may have some relevance to prior conduct or activities or judgments.

In general, the events that transpired after the purchase here at issue are irrelevant to the subject matter of this case which deals with claimed misstatements, whether themselves false or the results of omissions in the offer and sale of the commercial paper on March 13. What Goldman, Sachs may have heard at some future date, we submit, has no bearing on this case.

MR. BREINDEL: We are offering this not only to show --

THE COURT: Do you claim what they learned at a future date is relevant?

MR. BREINDEL: It may be. That is not the primary purpose of this document. The primary purpose is its our contention that the percentage of bank lines behind commercial papers is material. In this document Mr. Wilson tells Mr. O'Herron, and at this time they had the $5,000,000 inventory, he tells him that we are not going to raise the $5,000,000 inventory unless, among other things, you increase your commercial paper on bank lines to 100 per cent.

We think that goes to materiality.

THE COURT: It goes to materiality but if it occurred ten days after the sale is it proof of what the state of the affairs was at the time of the sale or how is it proof?

MR. BREINDEL: It's our contention this is an admission by Goldman, Sachs that 100 per cent bank line

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coverage is important for commercial paper issuers. Similarly in this document Wilson is telling Mr. O'Herron that investors are looking at 100 per cent bank lines. All these things we feel go to the materiality --

THE COURT: Investors are looking at 100 per cent lines. May I ask on the basis of general information whether Mr. Wilson, Mr. O'Herron and other principal persons about whom I read in the briefs are all available as witnesses and if not what the legal obstacles to their appearance are?

MR. BREINDEL: Mr. Wilson will be called by the defendants. Mr. O'Herron, I believe we are offering his deposition.

MR. MANEY: Mr. O'Herron is available but neither side has called him.

If I may briefly, your Honor, this whole question of bank line, the inventory, and inventory feelings will be an issue that will be throughout this case. We don't think you have to go to ten days after the purchase to get information.

For example, PX-20 received in evidence without objection records a meeting dated September 19, 1969, slightly mis-dated the 11th or the 12th,where the very same discussion takes place, a statement is made

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that there are investors who are looking to 100 per cent line coverage.

The question of the $5,000,000 guideline ceiling, or however you want to call it on inventory, was discussed on February 5 and February 6, recorded in blue sheets of those dates which have been received in evidence without objection. I really don't see that this document adds anything to what was existing before. It does not record a statement for the first time seen in the light of the blue sheets as to what Mr. Wilson was thinking.

Throughout this period the memoranda are quite full of discussions concerning bank lines, inventory, and the like.

MR. BREINDEL: I would like to point out what I am getting at. Plaintiff's Exhibit 20, which Mr. Maney refers to, in it Wilson says or Wilson discussed the nuances of the current commercial paper market particularly the stronger emphasis on bank line coverage in the minds of investors.

Jumping ahead he says R. G. Wilson said that we would for the time being not insist on such increase and report back to him on any market resistance the Penn Central notes received because of the 50 per cent coverage factor.

This is on September 11, 1969. Plaintiff's Exhibit 14 records a conversation dated March 23, 1970 in which Wilson takes a strong position. We are holding you to a $5,000,000 inventory instead, among other things, until you get your paper up to 100 per cent. This goes to materiality of the 100 per cent coverage. This shows a logical progression from September 1969 saying investors are concerned but we are not going to insist on it and showing their position all along with respect to bank lines which was not the same.

THE COURT: I will admit this in evidence. I want to make certain general observations after I make the ruling on this Exhibit but I will admit it in evidence.

A special observation which relates to this particular exhibit is that Mr. Wilson is going to be testifying and, of course, he can state on the record the extent to which his views were the same in September as they were in March, or what reasons there were to have them changed and what they were on March 13.

The general observations I want to make are that while I agree with Mr. Maney that as a general rule -- and I stress the words as a general rule -- documents which postdate the date of the purchase would not be admissible neverless I can conceive circumstances in which they might reflect on the views of the principals at an earlier date or might refer to material which existed at an earlier date or some basis which might make it appropriate to receive the document.

Furthermore, I prefer in a non-jury case to admit material subject to a comment by either side later as to its irrelevance or as to its lack of weight that throw it out altogether. That doesn't mean I am going to accept things wholesale but those are the kind of things I will receive.

MR. MANEY: Your Honor is admitting the entire exhibit or just that portion --

THE COURT: I am admitting it for the purposes for which Mr. Breindel has said he is offering it. I am going to give these back to as I rule on them.

MR. BREINDEL: I picked that out as one thing. We claim this also shows that earnings, materiality of earnings shows the continuing lack of credit investigation and I just picked one point to demonstrate the relevance of it.

THE COURT: I think the best I can do about the exhibits is if I let them in I will let you argue what they prove and allow Mr. Maney to argue what they don't prove or that it's irrelevant even if they prove it. I would prefer that in general, at least if possible, you specify the purposes for which a controversial exhibit is offered so that we have a sharper focus on it.

MR. MANEY: May I make a general observation along the same line. In the normal case, recognizing that this is a non-jury case, we would normally go along with the Court's taking exhibits subject to objection and for such weight as may be given after post-trial briefing. The problem we have in this case, your Honor, is that we have a statute with a shifting burden of proof and as long as an exhibit is in evidence we have to assume that it will be received at its full weight as the plaintiff proffers it for purposes of establishing affirmative defenses which I am afraid it tends to prolong the defense. That is one of the reasons why we may be objecting as if we were in a jury trial.

THE COURT: I understand that and I am glad you make the explanation. I don't know there is any complete escape from the dilemma but bearing in mind what you have just said I will do my best not to admit anything that I don't believe could conceivably be of value, of probative value.

We have 15, 16, 17 and 18.

MR. BREINDEL: Plaintiff's Exhibit 15 is a blue sheet prepared by Robert Wilson reporting on a telephone conversation with Mr. O'Herron on April 14, 1970. It's the plaintiff's position that this conversation helps to establish the fact that the $5,000,000 inventory limit imposed by Goldman, Sachs was material. It establishes that the earnings of Penn Central were material omission and it has a bearing on the adequacy of the credit investigation performed by Goldman, Sachs.

THE COURT: Do you wish to say anything, Mr. Maney, other than what you have said before?

MR. MANEY: It deals with information that is coming to the attention of Goldman, Sachs in mid-April. It's part of the ongoing monitoring of the Penn Central conducted by Goldman, Sachs.

THE COURT: As I understand it, taking it one at a time, the $5,000,000 limit, if you want to call it that, had been established at an earlier time, is that right, earlier than March 13?

MR. MANEY: Early February.

THE COURT: I understand that the first sentence, for example, of this is being offered to support the theory that that limitation was a material fact since it's mentioned here again as a matter of apparent significance.

MR. BREINDEL: If I may interrupt and point out that this is also relevant in that Mr. Van Cleave testified that it was not a limit, it was a guideline and this bears on Mr. Cleave's testimony.

THE COURT: Van Cleave hasn't testified in this trial. You can put that in at rebuttal for that purpose.

MR. MANEY: As far as the earnings information, that is information coming to the attention of Goldman, Sachs on April 14. How can that bear on knowledge of Goldman, Sachs in early March?

THE COURT: I won't accept it as proving knowledge of earnings of an earler date. Indeed it's possible the earnings in question hadn't even been announced prior to March 13 although I don't know. None of these exhibits will I accept as establishing knowledge at an earlier date but, as I understand it, they are not offered for that purpose, they are offered simply to establish the significance of items which the plaintiff will have had to prove were known at that date.

Is that correct, Mr. Breindel?

MR. BREINDEL: Yes, sir.

THE COURT: In that regard I don't think a discussion of earnings would prove anything more than what we all know, whether Mr. LeMay and Mr. Fitzpatrick knew about it or not, and that is that earnings are an important fact in any financial situation even if commercial paper is a different proposition than equity securities and I agree with you, of course, that it is a different quality of investment.

MR. MANEY: My problem is that we are dealing here with the earnings for the first quarter of 1970 which ended on March 31, 1970. As time passes they clarify, they become better able to determine what the figures will be.

THE COURT: To the extent that any of these exhibits includes information not proven to have been known to Goldman, Sachs prior to the 13th of March I will not accept them in evidence. To the extent that they discuss items which were known to Goldman, Sachs or proven to have been known to Goldman, Sachs on or prior to March 13 I will accept them to establish or to constitute a basis for argument as to the significance of that knowledge, its materiality and so on.

I don't think I can go through these things sentence by sentence, it's impossible. PX-15 is admitted on that basis.

MR. MANEY: PX-16 would be the same type of document.

THE COURT: All right.

MR. BREINDEL: If I may clarify your ruling,

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would these be admissible to show a lack of knowledge on a prior date?

THE COURT: Lack of knowledge by Goldman, Sachs?

MR. BREINDEL: Yes.

THE COURT: I don't see how you can prove lack of knowledge. They could I suppose if Wilson were to write down "I didn't know this until today", something of that sort.

MR. BREINDEL: Even if it's not that clear if he is asking a question I think under certain circumstances it may be fair to presume that he hadn't asked that question previously. I don't want to preclude myself from arguing that.

THE COURT: I will state that they are admitted to prove a lack of knowledge to the extent that they actually are competent to do so. But I must observe that, of course, the mere statement that Mr. O'Herron told me today that the losses for this quarter would be $56,000,000 doesn't establish that Mr. Wilson didn't know that in advance or did know it in advance in itself.

MR. BREINDEL: But it might be supportive of it.

MR. MANEY: Or that Mr. O'Herron would.

THE COURT: Right.

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MR. BREINDEL: Plaintiff's Exhibit 17, your Honor, is again a blue sheet dated April 15, 1970 prepared by Mr. Wilson who will testify. It concerns a conversation between Mr. Wilson and Mr.O'Herron concerning related events.

THE COURT: What is it offered to prove?

MR. BREINDEL: One of our arguments, one of our contentions, your Honor, is that because Penn Central was selling paper, selling securities on commission basis to Penn Central its judgment was clouded --

THE COURT: To?

MR. BREINDEL: To Penn Central, yes. In addition to selling its commercial paper, Penn Central was a customer and it would sell it commonstock and make a commission on it. It's our contention, plaintiff's contention, that because Goldman, Sachs was making a profit on Penn Central at the same time it was selling its paper its judgment was perhaps clouded in evaluating the creditworthiness of Penn Central as a commercial paper issuer.

THE COURT: How would Plaintiff Exhibit 17 relate to that question?

MR. BREINDEL: Gus Levy was the managing partner. It shows instead of a typical credit check being done Levy and Bevan, the top men at Penn Central who discussed such matters as other business, would try to get together.

THE COURT: I don't think it proves that at all. I will allow you to use it in cross-examination of Mr. Levy or whatever else you want to do, but it lacks sufficient probative weight to be admissible.

MR. BREINDEL: Plaintiff's Exhibit 18 again is a blue sheet by Mr. Wilson dated April 30, 1970 reporting on conversations of that date between Mr. Wilson and Mr. O'Herron. We feel it's relevant because it establishes or tends to establish the relationship between earnings and sales of commercial paper as it goes to materiality of earnings. It also contains a statement by Wilson that he had told his salesmen to --

THE COURT: As far as materiality of earnings is concerned, let me express my views at this stage of the game anyway.

This is what my views are at this stage of the game. Mr. Maney, the defendants, have argued that there is a distinct difference as to the significance of earnings vis-a-vis a decision whether to buy commercial paper or not, from their significance with regard to whether to buy stock, is that correct?

MR. MANEY: Yes, sir.

THE COURT: I find merit in that argument but

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I don't think that Mr. Maney or defendants would contend, and if they would I would not agree with them, that under no circumstances can earnings ever have any significance whatseover with regard to the wisdom of buying commercial paper.

I would suppose, taking an extreme example, that if Penn Central had lost $1,000,000 in 1969 that it would be possible to argue that a projection that they were going to continue losing at that rate would make it inadvisable even to buy the commercial paper. As for example, the banks have refused to buy notes of the City of New York. Therefore, I don't think it's necessary for you to establish that earnings can be a material factor in a situation of this kind. I think what is necessary for you to prove is that the degree of earnings or losses, the state of earnings known to Goldman, Sachs as at March 13, 1970 was such that by then it had become material even vis-a-vis the sale of commercial paper.

Therefore, I don't think I need a lot of extra things here later on that earnings may be material. I am prepared to accept the proposition indeed if it means ruling as a matter of law in this case that under some circumstances the earnings picture could be material with regard to the question of commercial paper, issuance and purchase.

Have I made myself clear?

MR. MANEY: Yes, sir. We are not in disagreement with that proposition.

THE COURT: I didn't think you could be. You have stressed, of course, that it's considerably less important and generally irrelevant with regard to commercial paper and that is why I mentioned the distinction.

MR. MANEY: Our position is, your Honor, that when a company that has $3,000,000,000 of net worth that the figures of earnings that were being reported up through March 13 were not material in relation to --

THE COURT: We are not in difference about the principal. We are all saying the same thing. He doesn't need to prove to us that this shows there are circumstances under which earnings could be material. He only has to show that the picture that actually existed was material.

MR. BREINDEL: True, but to that extent every time that Goldman, Sachs makes a comment which can be interpreted as an admission of sorts that earnings are significant, it is supportive of our argument.

THE COURT: I don't think I need Goldman, Sachs to tell me whether they agree with that theory or not. I find that it's material under some circumstances. So

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the question isn't what their opinion was on the subject, the question is what were the facts.

MR. BREINDEL: That is true, your Honor. My contention is that certain documents such as this are, in effect, an admission of materiality. In this document, for example, Mr. Wilson tells O'Herron that because of the terrible earnings in the first quarter he advised all Goldman, Sachs salesmen to tell any potential commercial paper investor who asked about Penn Central, to tell him of those earnings. This had never happened before so far as we can establish in the history of Goldman, Sachs.

THE COURT: Again as part of the plaintiff's case I am not willing to take this document six weeks later. Mr. Wilson will testify and, of course, he can be examined on this. I realize you have to prove a prima facie case here and if it comes to the point where such documents as this make a difference in my mind between whether you have or you haven't made out a prima facie case I will reconsider these items.

MR. BREINDEL: Let me make one final point, your Honor. One of our contentions, an additional contention of plaintiffs is that Goldman, Sachs behaved differently when it was inventorying Penn Central's commercial paper and when it was not. This document is a perfect example.

As of April 30, 1970 Goldman, Sachs was not inventorying Penn Central's commercial paper. It has a hugh loss and tells its commercial salesmen to tell every potential investor about this loss. On February 6, 1970 there was a loss, a significant loss. They were inventorying the paper and they didn't tell that to the salesmen. We argue there is an inference to be drawn and I can't make that argument unless that document goes in evidence.

THE COURT: That is a different point. Where is the instruction here to tell people?

MR. BREINDEL: I told them how the sale of their paper was being adversely affected by their first quarter losses. I told them that as a matter of first quarter losses each salesman was to read from the April 22 press release before executing any sales of Penn Central's transportation paper.

THE COURT: I will allow the document to go into evidence.

MR. MANEY: What Mr. Breindel is saying is that a different reaction to different facts somehow should draw an inference that Goldman, Sachs had a different motive. The fact of the matter is that Goldman, Sachs' activity in February when the year end results were published in the newspapers, which was subscribed to by the plaintiff, was different than the reaction in April when a different set of financial figures were published in the newspapers.

THE COURT: But the trouble, Mr. Maney, is that I can't tell at this stage of the game whether the difference in the conduct was based on the factors that you are putting before me or the factors that Mr. Breindel is putting before me or both. I don't think it would be fair to foreclose the plaintiff from putting before me such facts as might support their theory. I may not knock them out, knock them into a cocked hat by showing the facts were so different that their position vis-a-vis ownership of the notes was peripheral or inconsequential, but I am not going to stop him altogether at this stage of the game.

Are all of these items post-March 13?

MR. MANEY: Yes, sir.

THE COURT: All right. There is another Wilson - O'Herron note or conversation dated April 30.

MR. BREINDEL: April 29.

THE COURT: Then I have the wrong one here. This is a memo, I guess that is what it's called by Mr. Wilson, dated April 29 relating to information from Jerry Tripi.

MR. BREINDEL: Your Honor, very simply in this memorandum Jerry Tripi, a Goldman, Sachs salesman, says that a number of Pennsylvania accounts who bought Penn Central notes are not doing so now because of the recently announced first quarter losses. It is our position that this goes to show the materiality of earnings.

THE COURT: This is much too remote. You can call Mr. Tripi as a witness if you want on this or call the customers in.

MR. MANEY: We will offer or, in fact, we have offered as Exhibit CU a computer run that shows every transaction in Penn Central Commercial paper right through to June 19 which is the last trading date before they filed for reorganization.

Mr. Breindel wants to show the notes were not selling very well after the first quarter results were announced and that is pretty obvious from that computer run.

THE COURT: I am glad to hear that and maybe that will save the offer of other items. I don't know.

As you pointed out, he has an obligation to put in a prima facie case.

MR. MANEY: I will be glad to have CU received in evidence on Plaintiff's case.

THE COURT: All right. The other point I wanted to make was that this inclination, to use a word that has become famous in one piece of litigation before me, to accept this document is that it refers to what Tripi's filings about other people, unnamed, were doing, what they were doing, and this simply lacks the probative value that would be necessary to prove the basis on which it's offered.

Let me ask, however, whether offering CU will take care of your problem that you are trying to show that the sales of notes fell off, that the information became available.

MR. BREINDEL: That is not a matter of dispute. The question is why they fell off. We wanted to draw the inference that Mr. Tripi said it fell off because of the investors, Goldman, Sachs' investors, reaction to an earnings report. It's supportive of our contention that earnings are material.

THE COURT: You wouldn't have a hard time persuading me that there must have come a time that that were true. The question is we have to hear people on that. Motivation is not anything that I think can be proved on paper.

MR. BREINDEL: Plaintiff's Exhibit 36, your Honor, is again a blue sheet dated April 30, 1970. This is offered by Jack Vogel, the head of Penn Central's Commercial Paper Credit Department. We are offering this document to show that in this document appears the following statement, he said, referring to --

THE COURT: Where is this?

MR. BREINDEL: 12 lines down. He is referring to Penn Central. He said that their auditors, Peat, Marwick & Mitchell, had concluded that because of their standby commitment of one hundred million to back commercial paper that that amount could be offered as short term debt. We are offering this for two purposes. No. 1, we feel it's probative of showing that Penn Central was not using its commercial paper proceeds for current transactions and, No. 2, it shows the reliability of bank lines which seems to be clearly an issue in this case.

THE COURT: The reliability?

MR. BREINDEL: The ability to use bank lines in times of need. Peat, Marwick & Mitchell thinks the bank lines are so good --

THE COURT: Call Peat, Marwick, if you want. I am not going to accept this as proof of what Peat, Marwick said.

MR. BREINDEL: It's recorded in the business record.

THE COURT: It's recorded in the business record that it said so but not that Peat, Marwick said so. I am not saying the document is inadmissible. I am saying whether the document says that, it still doesn't show that Peat, Marwick says so. It says Ted shows that Peat, Marwick said so. In fact, it shows that John said that Ted said that Peat said that.

MR. BREINDEL: The purpose is to show that Goldman, Sachs accepted all of this. Goldman, Sachs accepted all this without going to Peat, Marwick.

MR. MANEY: I don't know what you mean by accepted in the sense he received the information but I do think this is a beautiful example of what Rule 805 is talking about hearsay within hearsay. This is triple at least.

THE COURT: If these rules approve of hearsay it has to be proved bad. It says that hearsay within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule.

I am sorry, I am not going to rule whether each part of this conforms to the hearsay rule or not. I am talking about whether it proves what you claim that it does prove, and that goes more to the heart of the matter.

It proves that at the most to me that Mr. Vogel took it sufficiently seriously to put it down, yes.

MR. BREINDEL: We can argue from that that this goes or shows Goldman, Sachs as their quality of the credit investigation and the adequacy of their credit investigation.

THE COURT: You mean inadequacy.

MR. BREINDEL: Yes.

THE COURT: If it's offered --

MR. MANEY: As of April 30.

THE COURT: I don't think the credit investigation as of April 30 would be relevant to this case.

MR. BREINDEL: If they wouldn't check on April 30 I think it certainly --

THE COURT: Show me what they didn't do before the 13th of March, not what they didn't do between the 13th of March and April 30.

MR. BREINDEL: One of our arguments is if they didn't do it by April 30 they certainly wouldn't have done it by March 13 when things were rosy.

THE COURT: I want to know what happened, not what might have happened. I am really not trying to make life harder for you or me but there is a lot of money involved in this and other cases to come and I think this has to be rather complete. I would like to ask Mr. Maney if he can tell me what this kind of material was offered in the case before Judge Metzner and if so what happened.

MR. MANEY: This particular exhibit, Exhibit 36, was not offered before Judge Metzner but the other exhibits which your Honor has considered were offered and all dated after the date of the purchase were excluded by Judge Metzner. Except for certain specifics, a single sentence in a document which could be shown to have some relation back to a pre-existing event.

THE COURT: At the very least it's fair to say he was quite selective in his examination.

MR. MANEY: Very few post purchase documents came in.

THE COURT: I don't mean to suggest that I find myself bound by Judge Metzner's rulings, but I am interested in them and now that I have made some rulings without knowing what he had to say I am pleased to see that we have taken somewhat the same approach.

MR. BREINDEL: Plaintiff's Exhibit 40, your Honor, is a report dated May 9, 1970 prepared by Mr. Hoffman, one of the four or five credit analysts employed in Goldman, Sachs' Commercial Paper Credit Department. It's his report of December 31, 1969, Penn Central financials.

I believe this report was in Mr. Hoffman's deposition testimony and he began to compile this in March and for one thing I think it's admissible in connection with his deposition to show how long it takes Goldman, Sachs to analyze an annual report.

THE COURT: I am perfectly willing. I assume that Mr. Maney may be too, to have the record reflect if it's a fact that it took Mr. Hoffman from X to Y to prepare this report and that that was not an abnormal amount of time.

MR. BREINDEL: I have another purpose, also, the prior report. We are trying to put that in evidence to show that the prior report, June 1969, there was nothing between these two reports which bears on the quality of the credit investigation.

THE COURT: I assume you can call on Mr. Maney to admit that if it's true.

MR. MANEY: I admit that there was an annual written report prepared by an analyst, that the report for the year ended December 31, 1968 was prepared in 1969 after that annual report became available and is in evidence.

THE COURT: It was completed in June, I gather?

MR. MANEY: Yes, your Honor. And that when the December 31, 1969 figures became available after the purchase in this case that they were then analyzed --

THE COURT: You mean the figures became available.

MR. MANEY: Yes, sir, the annual report came out in late March, that the analysts reviewed those figures and prepared a report which was not limited to December 31, 1969 but included some subsequent information learned by that person. I don't see what an analyst did in May --

THE COURT: I will accept your admission especially in light of the fact that the figures as at December 31, 1969 didn't become available until after the purchase but not only for that reason I will reject the offer of Plaintiff's 40.

MR. BREINDEL: Next is 41, your Honor. Plaintiff's Exhibit 41, your Honor, is a memorandum from Jack Vogel to Mr. Wilson.

THE COURT: Jack Vogel is who?

MR. BREINDEL: Goldman, Sachs' Credit Department head. He is reporting on a telephone conversation he had with Rudy Merker of NCO and based on the conversation he states that I am convinced there is a lot of soul searching going on in NCO relative to this rating. That is the prime rating. We feel that it's related to Plaintiff's Exhibit 10, their first contact with NCO but I tell your Honor this was rejected in Franklin National Bank according to my notes.

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THE COURT: I am not surprised. I will state for the record that that is rejected also.

MR. BREINDEL: Next is Plaintiff's Exhibit 44.

MR. MANEY: This is a different category of objections, your Honor. I don't know if your Honor wants to take --

THE COURT: If we are going to have wide gaps, let's go on.

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MR. MANEY: This one and 45 can be treated together. These are the documents prepared by Goldman, Sachs. 44 is dated December 30, 1969, and 45 is dated February 18, 1970. Both were the originals of which were on green paper and are known generically as green sheets.

THE COURT: Are these news releases?

MR. MANEY: Documents prepared by Goldman, Sachs and distributed to potential investors and investors as some information on the companies issuing the commercial paper. In view of the testimony given today that these were never received or read or considered by plaintiff or plaintiff's agent we object on the grounds of relevance.

THE COURT: I can conceive other grounds but let's hear what Mr. Breindel has to say.

MR. BREINDEL: These two documents were prepared during the relevant time period by Goldman, Sachs, as Mr.

Maney said. In both these documents there are representations made that Penco, a subsidiary of Penn Central Transportation Company --

THE COURT: Penco is the same as Pennsylvania Company?

MR. BREINDEL: Yes. There is a representation made that Penco is going to have a $50,000,000 debenture offering and that the net proceeds will be made available to Penn Central to reimburse its treasury for past capital expenditurs and payment of debt maturities. We intend to show the debt maturities referred to herein was Penn Central Commercial Paper in Goldman, Sachs' inventory which was not disclosed and that the proceeds, the balance of the proceeds were not used to reimburse Penn Central's treasury, but were in fact used to buy other commercial paper from Penn Central, that is from Goldman, Sachs.

THE COURT: Subject to connection. You say you intend to prove that by other documents?

MR. BREINDEL: Yes, and by testimony.

THE COURT: For some reason or another I thought you presented all your witnesses already.

MR. BREINDEL: Depositions, your Honor.

THE COURT: Subject to connection I will receive this for that limited purpose. That is 44 and 45.

MR. MANEY: 46 is a green sheet dated April 22, 1970. It relates to the first quarter.

THE COURT: This is post-purchase.

MR. MANEY: Yes, post-purchase, and our objection is on that basis.

MR. BREINDEL: This is the press release that Mr. Wilson asked his salesmen to read to Penn Central customers and we discussed in connection with the previous exhibit and it is offered for that purpose.

THE COURT: To read it to them?

MR. BREINDEL: Yes.

THE COURT: Over the phone?

MR. BREINDEL: That is what he says in the prior exhibit.

THE COURT: That is some job.

MR. BREINDEL: I think he is really limiting it to the earnings set forth in the exhibit. This is the green sheet. This is what the testimony will show, that when a Goldman, Sachs' salesman was dealing with a potential customer he looked at the green sheet if the customer wanted any information ordinarily. This ties in with the prior exhibit involving Mr. Wilson and it's offered for that purpose.

THE COURT: When did the information of the first

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quarter loss become known to Goldman, Sachs? Are the parties agreed on that?

MR. MANEY: April 22, 1970, your Honor.

MR. BREINDEL: He is referring to the first sentence referring to 1969, the last quarter. Is that what your Honor was referring to, the first sentence?

MR. MANEY: $17,000,000, which is the first quarter results, were made available to Goldman, Sachs on April 22, 1970.

THE COURT: That is the first quarter of 1970, is that right?

MR. MANEY: Yes.

THE COURT: Goldman, Sachs didn't know that fact until after the sale.

MR. MANEY: The press release was delivered to Goldman, Sachs on April 22 and at the same time, or maybe an hour or so ahead of being delivered to the public, I am not sure of that, and immediately was reproduced by Goldman, Sachs in this document.

THE COURT: I am just not talking about the press release, I am talking about the fact of the loss.

MR. MANEY: The fact of the loss was made to Goldman, Sachs through the press release.

MR. BREINDEL: This goes to our point of showing that at this point of time Goldman, Sachs was not inventorying commercial paper. What it did do, it seems is tell its salesmen to read this green sheet to potential customers. There was a similar green sheet, one admitted subject to connection, on February 18 when they inventoried the commercial paper --

THE COURT: Are you going to put in through depositions or otherwise the facts relating to the time at which Goldman, Sachs discontinued inventorying the letters?

MR. BREINDEL: Yes.

MR. MANEY: Exhibit CU establishes what the inventory levels were.

THE COURT: That is your exhibit. If so I am perfectly willing to allow you to use this for cross-examination of any witness but I am not willing to accept it at the present time.

MR. MANEY: Perhaps to speed things up, I wonder if it might be possible, with Mr. Breindel's agreement, to consider 47 through 52 together. I think they are all the same category of documents.

THE COURT: All right.

MR. MANEY: If the Court admits this into evidence we will try to find a legible copy.

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THE COURT: Are these post-sales?

MR. MANEY: These are general brochures that in most instances are prepared by Goldman, Sachs and used in soliciting general business from either investors or issuers. They are just general sales literature. Our objection is based on relevance, your Honor.

THE COURT: I can't tell they are relevant until I hear what Mr. Breindel has to say as to what they are.

MR. MANEY: Your Honor heard the plaintiff witnesses and there is not testimony that these documents were read or even heard third-hand by them.

THE COURT: That is true but I don't know that that is the sole basis on which one could argue what Goldman, Sachs says about a commercial paper isn't relevant to the case.

MR. BREINDEL: Exactly, your Honor. If I might turn your attention to Plaintiff's Exhibit 50, which is a document entitleed Open Market Commercial Paper, two authors by the name of Kroknow and Froelich , reprinted for Goldman, Sachs & Company. We offer this to show that Goldman, Sachs was reprinting a document which shows that that commercial paper is an extremely low risk investment.

MR. MANEY: On this document we would have an additional objection that this is a copyright 1950. As far as we can tell, it was published at or about that time and in a very rapidly changing market and what may have been the state of the market in 1950 --

THE COURT: I am willing to believe, unless Mr. Maney disagrees with what I am about to say, that commercial paper is ordinarily a low risk investment and I don't think even that the plaintiffs contend to the contrary. The question doesn't seem to me to be in this case whether commercial paper -- well, there doesn't seem to be any dispute about the question of whether commercial paper is ordinarily a low risk investment. The dispute is about whether the circumstanes here were sufficiently different than normal to require a particular course of action.

If that is the purpose for which these are offered I reject them but that doesn't mean you can't argue the proposition.

MR. MANEY: That is as to Exhibits 47 through 52?

THE COURT: Yes.

MR. BREINDEL: With respect to 58, your Honor, we have other documents to offer for the same purpose so if it's post-dated I will withdraw it.

THE COURT: All right.

MR.MANEY: 61 is the annual report.

THE COURT: Yes, for 1969, Penn Central.

When was this issued?

MR. MANEY: The president's letter is dated March 16. The auditor's certificate is dated March 12. I represent there will be testimony to show that it was released by Penn Central sometime after, on or after March 16, after the purchase date in this case. It is not entirely clear when it was mailed by Penn Central.

THE COURT: May I ask also whether an advance copy or any of the substantial information contained in it was made known to Goldman, Sachs before it was issued to the public?

MR. MANEY: There were certain proofs of the balance sheet and income statement that were made available to Goldman, Sachs and I don't suggest they weren't made available to others as well, which will be offered by defendant, and we would have no objection if plaintiff wants to offer those documents.

THE COURT: I will allow the plaintiffs to offer those documents.

MR. BREINDEL: What are the numbers of those documents?

MR. MANEY: I will get them. They are part of the credit files.

MR. BREINDEL: I think we can withdraw 62, your

Honor.

THE COURT: Thank you.

MR. BREINDEL: Plaintiff's Exhibit 70, your Honor, is a letter dated May 8, 1969 from Penn Central's general attorney to the ICC.

THE COURT: I note that this secretary's name is Garston. I suppose I should reveal the fact that it is my mother's maiden name.

What is it offered to prove?

MR. BREINDEL: It's offered to establish that this document indicates an acknowledgment by Penn Central that it was using commercial paper as a substitute for long term financing rather than to meet current transactions and that if Goldman, Sachs had done adequate credit investigation it would have been aware of that.

THE COURT: I don't know that it establishes that because I haven't read it.

Mr. Maney?

MR. MANEY: Your Honor may note that the copy of this document comes from the files of the ICC. Therefore, we believe it is self-authenticated but we do object that it's hearsay.

THE COURT: How can it be hearsay? It's hearsay if vis-a-vis Goldman, Sachs you mean?

MR. MANEY: Yes, your Honor.

THE COURT: I don't think the question is whether it is hearsay. The question is, without taking a position on Mr. Breindel's argument, the validity of his argument, he merely says that if they made a proper check they would have found this letter. They might have believed it or not. But for the purpose of establishing they were the founder you have to put it in. It's probative of the fact that it was in the files of the ICC.

MR. MANEY: But it is not relevant to the issues in this case.

THE COURT: I can't say at this stage of the game that it would be irrelevant. It depends, clearly, assuming the the plaintiff proves a prima facie case -- and I think we are proceeding on the assumption that they will do so -- then the nature of the credit check will be critical and you may, of course, establish that what you did was adequate, but I think they are entitled to put this in for the purpose of showing one item of inadequacy. Indeed I will say that just reading over the list of documents included in your credit file you start out with a presumption that it must have been adequate or a lot of busy work.

This is now presale and I don't know what it is.

MR. BREINDEL: It's a blue sheet, your Honor, written by Mr. Studt, the salesman of Goldman, Sachs in which he indicates Goldman, Sachs, solicitation of commercial paper business and reassuring of investors and it's offered in opposition to Goldman, Sachs' position that it never solicits or recommends the particular paper.

MR. MANEY: Your Honor, this blue sheet which your Honor can tell from the heading is not a blue sheet concerning Penn Central, but concerning another company was not written by a salesman. Mr. Studt is now a partner of Goldman, Sachs and at the time was a vice president in the corporate finance department.

THE COURT: To whom is it addressed? Is it addressed to anybody, or files or what?

MR. MANEY: These blue sheets are memoranda for the files. The purpose of them, and I believe plaintiff has offered, and has been received without objection, a memorandum setting forth a policy that any contact with a customer of any more than routine matter by anyone at Goldman, Sachs should be recorded in a memorandum to the files and that that goes to what is known as the credit file.

It may be a credit file on a customer, an issuer customer, or a corporate finance customer. This document just talks about a general reassurance, I assume, about the quality of his commercial paper.

[Discussion off the record.]

THE COURT: Plaintiff's Exhibit 73 is not accepted. It's not accepted in evidence.

MR. BREINDEL: Plaintiff's Exhibit 74, your Honor, is a letter dated November 28, 1969 from Mr. Robertson of Goldman, Sachs & Company advising the president of Hawaaian Cement Corporation, which had just bought I believe some Penn Central commercial paper, that Penn Central Company is surely one of their finest names.

THE COURT: I don't think that the fact that it's one of their finest names is terribly significant. I refuse to accept it.

MR. MANEY: May I suggest that 81 and 82 can be considered together and that they are related, at least in an evidentiary way.

THE COURT: All right.

MR. BREINDEL: None of the notes or writings on these are mine.

THE COURT: All right.

MR. BREINDEL: 81 and 82 deal, your Honor, with the fact that sometime in November of 1971 Goldman, Sachs established a credit review committee to review the credit worthiness of Goldman, Sachs' commercial paper issuers. I believe we will be able to establish that such action was recommended in March of 1970.

THE COURT: If you are going to establish it was recommended in March of 1970 fine, but I don't think the fact it was established in November of 1971, which is so far distant from the date with which we are concerned, is probative nor do I think it's necessarily part of your prima facie case.

MR. BREINDEL: I also think, your Honor, that it's probative of the fact that it was feasible for Goldman, Sachs to do this in 1970 and, therefore, it goes to the accuracy of their credit investigation.

MR. MANEY: Our objection is predicated on Rule 407 and what I believe the plaintiff is attempting to establish here is that arguably remedial measures taking place after the event, in this case the event being the reorganization of Penn Central, are some proof of the inadequacy of what was done prior to that date. And that these documents which relate to a committee which, as Mr. Breindel says, was set up in November 1971 is irrelevant, not irrelevant, not admissible as a matter of public policy.

MR. BREINDEL: I think it's admissible at a minimum to show that it was feasible in March of 1970 when they were discussing it.

MR. MANEY: The issue is not controverted.

THE COURT: The issue is not controverted Mr. Maney has stated. So the exhibits are not received in evidence.

MR. BREINDEL: This is a 1968 Penn Central memorandum from David Bevan to Mr. Saunders. This contains certain -- what we regard -- important information with respect to drastic castrating of railroad operations and placing short term debt on a long term basis. In short, this is again another type of document. It's our contention that if Goldman, Sachs had done their homework and done an adequate credit investigation they would have been aware of the facts set forth in Plaintiff's Exhibit 78.

THE COURT: I would think this is admissible. What is the basis of your objection?

MR. MANEY: Your Honor, there is no foundation for this document. It appears to be an internal memorandum, internal to Penn Central. It certainly is hearsay.

THE COURT: I keep forgetting that Penn Central is not a party but it seems to me as being in the same category as the ICC document, except for the fact that it's not self-authenticating.

MR. MANEY: ICC documents are public records but internal memorandum of Penn Central are anything but.

MR. BREINDEL: This was admitted by Judge

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Metzner and it's tied in with testimony of a deposition of a Penn Central witness, Mr. Asay.

MR. MANEY: This was rejected by Judge Metzner.

MR. ATLAS: Plaintiff's Exhibit 90, which is the same caliber as 88 and 89 relate to the same issue. The information of Goldman, Sachs could have or should have been obtained if they made inquiry. This subject was inquired into before Judge Metzner and he admitted that through the testimony of Mr. Asay and Mr. Sullivan.

THE COURT: I will admit it if it's proven during the course of the trial that the material was available to Goldman, Sachs.

Do you contest the authenticity?

MR. MANEY: No, we do contest the business record nature of this document because there has been no testimony either through Mr. Bevan's deposition or by any other witness that this is a business record. If the Court is suggesting that the plaintiff must establish its availability, I suggest that goes to relevance. As far as hearsay, we think there is a business record problem.

THE COURT: How do you get over that problem?

MR. MANEY: There was a custodian from Penn Central who testified before Judge Metzner and on the basis of his testimony --

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THE COURT: As to this document ?

MR. MANEY: Yes, and this document was excluded. I believe in part Judge Metzner considered that there was a diminishing relevance as you went back in time as well.

MR. BREINDEL: There are three more less similar documents, 88, 89 and 90, similar internal memorandum. 90 I believe was admitted by Judge Metzner on that basis.

THE COURT: What is that date?

MR. ATLAS: August 20, 1969.

MR. BREINDEL: 90 was October 20, I believe.

MR. ATLAS: There was a question that the further back you went there was diminishing value. He did acknowledge, however, the probity of it in terms of what Goldman, Sachs might have obtained if they had made it.

THE COURT: I said I think this may be probative if you can establish, No. 1, that this was available to Goldman, Sachs for the asking. But that is where I stub my toe and I won't admit it at the present time.

MR. BREINDEL: If I understand your Honor's ruling the problem is one of authentication?

THE COURT: No, Mr. Maney admits it's authentic. He denies its proof of its contents, is that right?

MR. MANEY: It's a hearsay objection and irrelevance to the extent it can't be established that it was available.

THE COURT: My holding is that if you can prove it was available to Goldman, Sachs, then on the basis of the concession of authenticity I will consider it for what it's worth.

MR. ATLAS: I would point out as to the hearsay objection --

THE COURT: As to the hearsay objection let me state my position. It may be hearsay although I have some doubt in my mind as to whether it's likely that Mr. Bevan would be presenting to Mr. Saunders facts which were not correct with regard to the proposition but putting that aside the question in my mind is, first of all, whether Goldman, Sachs was obligated to do anything about it as far back as 1968 and, secondly, as I said before, whether it was available to him for the asking and, third, whethe if it had known about it it would have been of quality that was material at the time.

There are a lot of questions even after the one that you show that it would be available to Goldman, Sachs then and there. But I would accept it for what it's worth if it were established that it was available to Goldman, Sachs for the asking at a proper time.

MR. ATLAS: Our only point at this time is not that plaintiff's exhibits 88 through 90 contains truthful statements obviating the hearsay problem, but only that subject to further connection that this is the type of information that Goldman, Sachs could have uncovered, discovered whether it was true or false upon a reasonable inquiry. Not that the information per se in the exhibits are true.

THE COURT: At such time as you establish that they could have received such information upon request or appropriate demand or whatever the procedure was, you can offer it again.

MR. BREINDEL: Let me bring up a point in that connection. We will have certain deposition testimony which we will designate after the trial. Being that we are not reading the depositions, in our post trial memoranda can we indicate that deposition of X at pages such and such establishes that fact?

THE COURT: Yes.

Let me say that I think it might be desirable, let's say a week after the completion of the trial, to get together to tie up any loose ends of matters that are related to or dependent on the material that is contained in the deposition.

MR. MANEY: May I just observe, because I believe in view of the Court's ruling, Exhibit 90 which purports to be a memorandum from Mr. Bevan to Mr. O'Herron, from Mr. O'Herron to Mr. Bevan, Mr. Bevan was shown this document and said he had no recollection that he ever received it. So we have that constant problem.

I think perhaps the most eloquent example of this was a comment by the Court last week in another case involving the same document.

THE COURT: This Court?

MR. MANEY: The Eastern District of Missouri, that there are a number of pieces of paper in chambers which if the Court signs them becomes orders and if the Court does not sign them they are pieces of junk. We don't know what category these documents fall into.

THE COURT: I gather that you assert that they have not been signed, so to speak.

MR. MANEY: We don't know whether they were proffered and rejected.

THE COURT: I can't comment on what you just said until I know whether something is offered for the purpose of showing what Mr. O'Herron said or that Mr. Bevan was aware of what Mr. O'Herron said.

MR. ATLAS: With respect to Plaintiff's Exhibit 92 and 93, I suggest that we treat them similarly as with

Plaintiff's Exhibits 88 through 90.

MR. MANEY: We have an authenticity objection to those, your Honor.

THE COURT: What is 92?

MR. ATLAS: 92 is a document prepared by Mr. O'Herron for Mr. Bevan dated October 22, 1969 and talks about certain, what we consider to be, important financial information of the railroad at that time.

THE COURT: Mr. Maney says there is an authenticity problem with regard to 92. What is that problem?

MR. MANEY: 92 and 93 were both shown to Mr. Bevan and Mr. Bevan did not authenticate them.

THE COURT: Are they from the files of Goldman, Sachs?

MR. MANEY: No, your Honor.

MR. ATLAS: They are from the Penn Central files, as I understand.

MR. MANEY: They would appear to come from the Penn Central files but the Penn Central custodian who testified at the prior trial couldn't authenticate them either and for that reason they were rejected.

THE COURT: I don't think --

MR. MANEY: Maybe this is something we can handle in a post-trial evidentiary brief or reoffered on defendant's case at some future date. I think that is what is being suggested.

THE COURT: All right, judgment deferred on those.

MR. ATLAS: 100.

MR. MANEY: 96, 97 and 98 are objected to, your Honor. They were put in the wrong column. I am sorry, your Honor.

THE COURT: Let's go ahead with the ones we have in front of us and we will come back to them.

100.

MR. MANEY: Exhibit 100 seems to be eight pages of handwritten notes.

THE COURT: Where does it originate from?

MR. BREINDEL: Handwritten notes of Mr. Lepley of Penn Central to another Penn Central employee.

THE COURT: Is this one of the items offered for the purpose of showing what Goldman, Sachs could have found out if they wanted to try?

MR. BREINDEL: It goes beyond that. Mr. Lepley states in his notes that Goldman, Sachs is unable to keep up with Penn Central's roll over requirements.

THE COURT: But that doesn't apply to Goldman, Sachs.

MR. BREINDEL: It also goes on to say that

Penn Central's commercial paper on a working capital basis was very weak.

THE COURT: Again, that wouldn't be binding on Goldman, Sachs.

MR. BREINDEL: No, but I think it's probative of Goldman, Sachs' credit, the accuracy of the credit investigation whether or not they could have --

THE COURT: I don't think it's probative of it unless you prove it was available. What is the date of it, by the way?

MR. MANEY: That is Mr. Breindel's representation that Mr. Lepley is the author. There is no testimony of that anywhere.

THE COURT: I will have to reject it for the time being.

Gentlemen, I am sorry to discontinue at this time but I have to do so.

I would like you to offer sections of the deposition in evidence and specify what you claim that they establish.

MR. BREINDEL: The stipulation your Honor signed this morning was that that procedure was going to take place approximately ten days after trial because we have already designated what we want.

THE COURT: I see. Without prejudice to that, to the rights that either of you have under the stipulation are to the right on Mr. Maney's part to object and have me rule I have to have some feel of what your case is going to include so that I can rule on the motions that are going to be made.

MR. MANEY: May I say that in view of the nature of this rather voluminous deposition testimony being offered that while we will move for a directed verdict we recognize that in advance of making the motion that it would be virtually impossible for the Court to rule on the motion, and, therefore, make it a pro forma motion.

THE COURT: That is all right with me.

Thank you gentlemen. Ten o'clock tomorrow, gentlemen.

[Trial adjourned to October 29, 1975 at ten a.m.]

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BEST COPY AVAILABLE

UNIVERSITY HILL FOUNDATION,

- vs -

GOLDMAN, SACHS & CO.

October 29, 1975

[10:00 a.m.]

- - -

[Trial resumed.]

[In the robing room:]

MR. MANEY: Your Honor, if I may, there was a question as to whether a particular document which was offered separately during the course of the trial has been received or has not been.

I was just wondering if we could clarify that.

Plaintiff's Exhibit 9, my notes indicate it was not received.

MR. ATLAS: My notes indicate it was.

MR. MANEY: That was a memorandum by counsel for Union Bank, dated March 1971.

THE COURT: Who marked it here?

THE CLERK: I have it that it is received.

THE COURT: I don't remember offhand.

MR. BREINDEL: Your Honor, if you wish to defer, we ordered an expedited copy of yesterday's transcript which might clarify it.

MR .MANEY: This did not occur during the argument in chambers. I understand Mr. Breindel had ordered expedited delivery of the hearing in chambers. My recollection was that this was not a contemporaneous memorandum.

THE COURT: I don't see referent to Plaintiff's Exhibit 9 in my notes, which confuses me. Whose testimony?

MR. BREINDEL: This was put in during the testimony of Mr. LeMay.

THE COURT: On direct?

MR. BREINDEL: On direct.

THE COURT: I see Plaintiff's Exhibit 8 which I said wasn't necessary -- Exhibit 8 came in after Exhibit 9.

MR. BREINDEL: Yes.

MR. MANEY: Your Honor, I don't think it is a matter that will afffect the balance of the trial.

THE COURT: I have no indication that it was admitted. I have it down as Plaintiff's Exhibit 9 for identification, and I don't see later on anything to indicate that it was admitted in evidence.

I don't recall if it was offered or not offered.

MR. BREINDEL: I believe it was offered, your Honor.

THE COURT: Now, I do vaguely recall, it was a question of whether or not it was necessary in view of the fact that the witness himself was there and testified about the discussion, which he said this accurately reflected, and I think I did state that I wouldn't accept it because we had the witness' testimony. I think the testimony is the best evidence.

MR. BREINDEL: We had offered it at the time, your Honor, as past recollection recorded.

THE COURT: I said I didn't think there was any indication that the recollection needed refreshing or that the recollection wasn't complete.

Okay, that answers that.

Will you move on to the others now?

MR. MANEY: I believe yesterday I had misspoken on Exhibits 96 through 98. They should have been objected to.

THE COURT: I understand that. Do you wish to go ahead with those now?

Will somebody explain it to me, please.

MR. ATLAS: These are the handwritten notes of Mr. Lepley dated January 13, 1970. We offered these because it indicated that Mr. VanCleave of Goldman, Sachs had desired to reduce or eliminate Goldman, Sachs inventory, and also indicated what the inventory was as of January

12 of 1970.

THE COURT: Is it admitted that these are in the handwriting of -- who did you say?

MR. ATLAS: Mr. Lepley.

MR. MANEY: It is not conceded, your Honor.

THE COURT: In other words, you object on the grounds they have not been authenticated.

I don't see how I can get over that unless you call a witness. I won't accept it at the present time. You can use it for cross-examination.

MR. ATLAS: I suppose the same problem, your Honor, exists with respect to Plaintiff's Exhibit 97.

THE COURT: Okay. Same ruling.

Is that true of 98 also?

No, that is different. It is dated March 9, 1970.

MR. ATLAS: This is a memo from Mr. Underhill to Mr. Saunders. It is an internal Penn Central document.

THE COURT: For what purpose is it offered?

MR. ATLAS: I don't believe that this memo was authenticated by Mr. Asay during his Franklin testimony. I guess I should point out to your Honor there is an agreement between University Hill and Goldman, Sachs that the testimony of Thomas Asay, a Penn Central employee, caretaker of certain documents, taken in the Franklin trial, Franklin Savings Bank trial, will be used for purposes of testimony in this trial along with the testimony of Mr. Sullivan, too. Is that correct, Mr. Maney?

MR. MANEY: It will be on defendant's case.

MR. ATLAS: He is vice president, I believe, of Manufacturers Hanover.

THE COURT: How does Mr. Asay --

MR. ATLAS: Mr. Asay, as I said, I don't believe Mr. Asay had authenticated this document, so I believe we have the same problem on 98 that we had with 97 and 96, but since they refer to Mr. Asay --

THE COURT: I hope we are not going to get bogged down on questions of authentication except where there is a serious question about the authenticity of the document.

I can see that scribbled notes might be something that you might not want to agree to unless there is a witness who explains what it is all about. This looks like quite an official paper.

MR. MANEY: The problem with this and other documents that are similar in style is that they did come from the files of Penn Central pursuant to a subpoena served during discovery. This particular document I don't believe was shown to a witness or authenticated by a witness, but others, when shown to witnesses, in many instances, the witness said, "I don't believe I ever saw this even though it purports to be authored by me."

It is quite unclear as to whether some of these memoranda were drafts that never left the office.

THE COURT: In other words, you believe that the defendant is entitled to explore the history of the document before it is put in evidence.

MR. MANEY: Before there is a shift in the purpose as to whether the document is real, and therefore, we would have to establish that in the exercise of reasonable care we could not have learned of purported facts. We really think --

THE COURT: That is an adequate statement at the moment.

Itis rejected without prejudice.

MR. ATLAS: We are now back to Plaintiff's Exhibit 100 where we left off yesterday.

At this time, with respect to Plaintiff's Exhibit 100, we would withdraw offering this into evidence at this time subject to Mr. Lepley testifying at this trial, at which time it would be sought to be introduced at that time.

THE COURT: Is he expected to testify?

MR. MANEY: He may or may not, your Honor. He is listed as a witness.

THE COURT: Under the circumstances, then, I will specify that if you do not call him -- unless you want to call him now, do you, for this purpose?

MR. MANEY: Mr. Lepley's deposition testimony was taken and we had raised with counsel for the plaintiff the possibility we would be using the deposition testimony.

Mr. Lepley is the treasurer of Penn Central and a busy person. We primarily were thinking of using his deposition.

MR. ATLAS: It was my understanding that there was a possibility that Mr. Lepley would be called live.

THE COURT: There is a possibility, but there is no certainty.

What if he isn't?

MR. ATLAS: At that time I would reoffer the document, but I suspect, quite frankly, that I would be subject to the same problems that we discovered on the other Lepley handwritten memos, question of authentication.

I don't believe that this was authenticated during his deposition testimony.

THE COURT: I understand. If he is called he can authenticate it. If he isn't called, what do you want to do?

MR. ATLAS: I think we would have to withdraw it at that time, your Honor.

THE COURT: All right.

MR. MANEY: Your Honor, would it be appropriate to take 101, 2 and 3 together?

THE COURT: I will be glad to take as many as possible together.

MR. ATLAS: If I understand it, Mr. Maney, is the objection to 101, 102, 103 a question of authentication?

THE COURT: Are these Penn Central documents?

MR. ATLAS: Yes . These are memos that were prepared by Mr. Underhill who was in charge of forecasting or budgeting for Penn Central to Mr. Bevan, containing predictions and projections for 1970, first quarter earnings, or the lack thereof.

Mr. Asay's testimony and Mr. Sullivan's testimony of Franklin both authenticate the documents and establish their relevance, and based upon that testimony we urge that they be admitted in this case.

MR. MANEY: Your Honor, Mr. Asay, at Page 78 of his direct testimony before Judge Metzner, in the Franklin Savings Bank case, merely testified that these three documents he found in a file under his custody which came from the office of Mr. Saunders, who was then chairman of the board.

We are not pressing authentication as such, based on that testimony. We do argue that the documents are not established to be business records.

Mr. Bevan, who was chairman of the finance committee of the board of directors of Penn Central testified at Page 172 of his deposition that he has no recollection of ever having seen them, and he further testified at Page 171 of his deposition that these were "not regular documents."

So these are critical documents because they purport to be running projections that cry out for explanation, but they cry out for explanation as a condition precedent rather than a condition subsequent, your Honor, in our view.

There is no explanation of what they are, for what purpose they were prepared.

The testimony taken on the deposition certainly indicates that, as was true with many railroads, the operating people wanted to spend billions goldplating tracks, and the financial people were constantly screaming to cut costs. Whether these projections were prepared for certain in terrorem effect, whether they were the best estimate of time, what assumption went into them, all of this goes to, as I believe, as a condition, a foundation for their admissibility, not an explanation which we would then have to present as to what these documents were and under what circumstances they were prepared, under what circumstances they were distributed.

I think they are fairly clearly on their face --

THE COURT: What do you offer them to establish?

MR. ATLAS: As was made clear through the testimony of Mr. Asay and Mr. Sullivan, we offer them to establish what Goldman, Sachs could have and should have obtained, what kind of information they could have been made aware of if they had made a reasonable credit investigation, if they had made any inquiry whatsoever.

It is true they are just projections, but the point is, it is what they possibly would have led to.

Goldman, Sachs could have easily determined that they were accurate, inaccurate, whatever. The point is that they should have made an effort to have that information. Whether or not the projections of Mr. Underhill are accurate or not --

THE COURT: I will admit them for the purpose of indicating whether they were in the files, subject, of course, to any qualifications as to their dependability, which is brought out by the defendants, and I want to say that the qualifications that Mr. Maney has mentioned so far I think are very substantial and considerable and, in my opinion, if they are correct, sharply reduce the weight of the exhibits, but I will allow them to go in.

MR. ATLAS: 105.

THE COURT: Is this offered for the same purpose, a Penn Central document?

MR. ATLAS: Once again, it is an internal Penn Central document prepared as of November 5, 1969.

We offer it to establish that if Goldman, Sachs had made a reasonable inquiry it would have discovered what Penn Central's own projected 1970 cash stream would be, which is significant.

THE COURT: I can see that. What is the history of this document? Has it been authenticated?

MR. ATLAS: I believe it has been produced from the Penn Central files. That is my understanding.

THE COURT: Has anybody said what it is, whose it is?

MR. MANEY: Not a single witness has explained it or even been asked about it.

THE COURT: I don't see how I can accept it then. This sort of thing is pretty volatile. It shows in

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1970 projected cash drain of $472,000,000 which would be an important item if it were properly supported, but which means nothing unless I have an explanation of it.

MR. ATLAS: 106 is the next one, I believe.

THE COURT: I am always relieved when I see it has a date before March 13th.

MR. ATLAS: This is a memo prepared by Mr. R. W. Loder, dated February 9, 1970.

THE COURT: Who is Mr. Loder?

MR. ATLAS: Mr. Loder is -- I believe he was --

MR. ARONSON: Assistant vice president of investments in Penn Central.

THE COURT: All right.

MR. ATLAS: It relates a conversation he had with Patrick Bowditch who was vice president at First National City Bank, who was also involved with the Penn Central financial situation.

It reflects the fact that several banks had expressed a concern about the diminishing value of the Pennsylvania Company stock which was being used as collateral, and used as a means of raising money for the transportation company.

We believe it is indicative of the type of information that was available to Goldman, Sachs and since

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it was available to --

THE COURT: Same purpose; this is one of the documents that they would have found if they looked, is that right?

MR. ATLAS: Yes.

MR. MANEY: Your Honor, this document, of course, contains -- there are hearsay problems on this document besides authentication. This document was --

THE COURT: I don't think that the question of hearsay arises with regard to the theory pressed by the plaintiff here.

All they are saying is this would have alerted somebody, even if it was misinformation. They could have looked into it further.

So I don't think it is offered for the truth of the contents, but just for the fact,as I have said.

MR. ATLAS: That is correct.

MR. MANEY: Mr. Asay said this document came from the files of Penn Central, but that is all he could say, and he wasn't even saying that the document -- if my copy of 106 is the same as plaintiff's, which has the initials of Mr. Loder on the second page or purports to be the initials of Mr. Loder -- Mr. Asay didn't even have that copy in his files. This was originally excluded in the Franklin case and later, through the testimony of Mr. Lepley, I believe, was then reoffered and received in evidence. But only with that testimony as to what was the source of the document.

THE COURT: Was there any reason why Mr. Lepley's testimony couldn't be admitted in this case, if you wish to have it admitted?

MR. ATLAS: I believe Mr. Lepley's testimony is designated in this case.

THE COURT: Under those circumstances, recognizing that it is not competent at this stage, anyway, for the proof of its contents, I will admit it.

MR. ATLAS: The next document, your Honor, is Plaintiff's Exhibit 107, which I believe is an ICC document, thus being a public document.

MR. MANEY: Beg your pardon, your Honor. This is not an ICC document.

MR. ATLAS: I'm sorry, your Honor. It is an internal Penn Central document reflecting conversations with ICC officials.

THE COURT: Is this on the theory of the recent batch?

MR. ATLAS: The ICC's very evident concern is indicated with the success of short term borrowings.

THE COURT: Is it being offered as a document which Goldman, Sachs would have found in the Penn Central files if it had made the investigation you claim it shoould have made?

MR. ATLAS: It is offered on that basis, and also offered as indicative of the information that Goldman, Sachs should have been aware of in terms of short term borrowings. They were aware of the application to the ICC; they participated in it; they offered opinions in connection with increasing the outstandings, and that this information was available if they had made the effort to find out.

MR. MANEY: This document is a memorandum prepared by a lawyer of a meeting with someone else who had no duty to report to that lawyer.

It is inconceivable on its face that this is the kind of document that would have gone out of the legal department of Penn Central.

Besides that, we have no idea of the circumstances under which it was prepared. The author has not been asked whether this was an accurate memorandum of the conversation.

THE COURT: Without that foundation, I can't admit it.

I was talking only in terms of --

MR. MANEY: There is testimony that this came from the files of Penn Central and that is the only evidence.

THE COURT: Because I think the material here is so subjective in nature or, at least, in estimate, and therefore its significance depends on the testimony of the person who wrote it, I will reject it at this time.

MR. ATLAS: The next document, your Honor, is Plaintiff's Exhibit 108 and once again that is a document that we seek to introduce to establish the type of information, the nature of the information that Goldman, Sachs would have obtained if it had made a reasonable inquiry.

It is a memo dated September 10, 1969, from David Bevan, who was chairman of the finance committee to Mr. Stuart Saunders.

THE COURT: Is there any question of authenticity?

MR. MANEY: No, your Honor.

MR. ATLAS: No.

MR. MANEY: It is purely a question of hearsay, your Honor.

THE COURT: Again, if it is offered, as I understand it, solely for the purpose of indicating that this would have been an alerting document, I think the hearsay problem is put aside because I will not accept these documents as proving the truth of the contents of the document that only as the limited purpose for which they are offered.

For that purpose I think this document is to be received. It comes from one of the more important officers, the second most important officer of the corporation, to Mr. Saunders, who is the chairman of the board, and it would seem to me, assuming, of course, which I don't find at the moment, that plaintiff establishes that a further inquiry should have been made, this kind of document certainly would have been an alertive document.

MR. MANEY: Even though the author of the document says it is completely out of context, on his deposition? Mr. Bevan, Page 157 and 158 of the deposition --

THE COURT: I don't think that is the question. I think if you looked in a drawer and you say to yourself, "What the devil is this?" then you might have gotten in touch with Mr. Bevan or Mr. Saunders to find out what the context was.

This isn't being offered, as I see, for any purpose except to say Mr. Bevan wrote an alarming letter saying, note to Mr. Saunders, I'd better follow that through.

MR. ATLAS: That's right.

THE COURT: I want to make it clear, I am not at the moment buying the plaintiff's theory that the defendant was under an obligation to make any further check than it did make, and I certainly will never reach any such conclusion until I have heard the defendant's case as to the kind of check it made, but I am in agreement that it is possible that they might have made a further check or I may reach that conclusion, and that, if so, this kind of document would be a relevant document.

It is accepted on that conditional and limited basis.

MR. MANEY: I take it, your Honor, that means also not only as to whether the check would have been made, but also whether that check would include --

THE COURT: Looking for things like this or going through their drawers.

MR. MANEY: Or a break-in.

MR. ATLAS: Your Honor, the next two exhibits can be treated, I believe, similarly as Plaintiff's Exhibit 108. They are 110 and 111.

MR. MANEY: Your Honor, 110, I think, is a perfect example of the kind of document that we are afraid of. Mr. Bevan was shown this document on his deposition. He said those initials are a forgery.

THE COURT: That is a different matter. I asked you about the last one, whether there was any question of authenticity.

MR. MANEY: No, there was not.

THE COURT: I would say if Mr. Bevan says this is a forgery, that is too serious a claim on his part for me to accept it, even if it might have been in the files.

MR. ATLAS: I believe there is no dispute that this was in the files. Whether it is a forgery or whether Mr. Bevan claims it is a forgery, I don't believe would necessarily reduce this to --

THE COURT: Of course, it is not conclusive on the theory that I have bought up to a point, that the first question is whether it would alert somebody, but I think the probative value of it is so serious, it may put into such serious question that it is not a document of Mr. Bevan, where somebody might have put it in later or something of that sort, that I will not accept it.

111?

MR. ATLAS: 111 similarly.

THE COURT: From Lepley to Loder. Has this been authenticated?

MR. ATLAS: I believe this was also produced from the Penn Central files. Is that correct, Mr. Maney?

THE COURT: What does Lepley have to say to Loder or anyone? I see a carbon copy of this went to O'Herron, anyway, so what more do you need? It indicates that a carbon copy went to O'Herron.

MR. MANEY: I don't think this document --

MR. ARONSON: I believe this came in through Mr. Lepley's deposition.

THE COURT: Did or did not?

MR. MANEY: It was admitted through Mr. Lepley's testimony in prior trial. Again, I don't think it was authenticated by the custodian as required by the rule. Mr. Lepley --

THE COURT: Well, he could testify, I suppose, regardless of whether it was authenticated, that he wrote this letter to Mr. Loder.

I don't know what the limitations --

MR. MANEY: We will withdraw the objection.

THE COURT: All right.

MR. ATLAS: That is accepted then?

THE COURT: Yes. Apparently a copy went to O'Herron, anyway.

MR. ATLAS: Yes.

The next document which is Plaintiff's Exhibit 124, your Honor, we withdraw it.

THE COURT: 113 through 115.

MR. ATLAS: I'm sorry. 113, is that the SEC staff report?

MR. MANEY: Yes.

MR. ATLAS: We offer that in evidence, the Commission's staff report on the commercial paper problem with Penn Central.

THE COURT: What is its date?

MR. MANEY: This is an investigation conducted by the SEC staff after the reorganization in Penn Central.

THE COURT: What was the date?

MR. MANEY: August 1972, I think.

THE COURT: What do you offer in evidence? Am I supposed to accept all the findings of the SEC or what?

MR. ATLAS: I think it can be considered in terms of the information contained in there which should be given possibly consideration.

THE COURT: I'd rather not accept it in full. I'd rather have either of you bring to my attention whatever you wish to bring to my attention and allow the other side to comment or argue about it.

For me to accept the whole thing wholesale, I don't know what people want me to pay attention to and what they don't want me to pay attention to.

MR. MANEY: Your Honor, this is a document that under any theory we believe is inadmissible. If it is being offered to show facts that are reported by the staff during the discovery phase, all of the testimony given by the SEC was produced on discovery and we are not challenging that SEC testimony can be utilized.

THE COURT: The testimony itself?

MR. MANEY: The testimony itself, and the documents that were produced. These are the conclusions of the staff of the SEC, not the Commission itself, and formulated in a document which went to the House of Representatives in connection with proposed legislation, so we think that it is inherently of the axe grinding variety, besides, we think it is hearsay and inadmissible under any theory.

Besides, its prior history in terms of admissibility is three offers and it's been rejected.

THE COURT: I won't accept it.

MR. ATLAS: Plaintiff's Exhibit 115 is the next document, I believe, and that is the petition for reorganization of Penn Central Railroad.

MR. MANEY: Our only point on this is we stipulated that Penn Central file for reorganization on June 21, 1970, therefore, the document itself is cumulative for that point, and the balance is hearsay.

THE COURT: I don't see what I need it for.

MR. BREINDEL: It is a public record.

THE COURT: What does it tell me?

MR. ATLAS: In Paragraph 3 it refers to the commercial paper maturities.

THE COURT: Is this the way you are going to prove those maturities or is it already in the record, anyway? I don't want to make a fuss about it. It just seems to me, if it adds something that isn't in evidence otherwise, I will accept it for what it adds.

MR. BREINDEL: Page 2 of it says the debtor has been suffering large deficits since 1968, is virtually without cash. It is signed by David Bevan.

MR. ATLAS: Paragraph 4 also is reflective of the statement that Mr. Bevan is making as of June 21st in light of --

THE COURT: These statements aren't binding on Goldman, Sachs. The fact that David Bevan says there were large deficits in '68, while I am sure it must be so, isn't binding on Goldman, Sachs.

MR. MANEY: Your Honor, that is Mr. Gorman, I believe.

MR. ATLAS: Gorman.

THE COURT: What fascinates me about the document is how the Penn Central could go into bankruptcy in just a page and a half.

MR. MANEY: On Sunday.

THE COURT: Off the record.

[Discussion off the record.]

THE COURT: On the basis of the explanations made to date, I will not accept Exhibit 115.

MR. ATLAS: I believe the next document is Plaintiff's Exhibit 124, and we will withdraw that at this time.

THE COURT: All right.

MR. ATLAS: The next one I believe is 125, and I would like to treat, if we could, both Plaintiff's Exhibit 125 and 129 at the same time.

THE COURT: All right.

MR. ATLAS: Both of these Goldman, Sachs documents we would urge would establish the motivation, a motive for Goldman, Sachs' behavior during this period of time, their fear, their concern about the commercial paper market, about what it would do their business and the effect of the Penn Central situation, and certainly the memo, Plaintiff's Exhibit 125, dated June 20th, indicates their very, very significant concern regarding the effects on the commercial paper market and the 22nd is the culmination of that fear.

THE COURT: What do you say?

MR. MANEY: Your Honor, the first document, Exhibit 125, is dated Saturday, June 20th, the day after the Government, with the assistance of Congressman Patman, withdrew the offer to extend a loan, a Government loan to the Penn Central.

This is a reaction of someone at Goldman, Sachs as to what might be the effect if Penn Central were to go into bankruptcy.

The other document, Exhibit 129, is a statement to be made in response to inquiries received after the bankruptcy as to what happens.

These are questions that came up in a totally different context. I see no relevance.

THE COURT: I think they are relevant or I think they may be relevant. They come from the files of Goldman, Sachs itself. On their face they appear to have some connection with the situation that we are dealing with, and I think that counsel should at least be allowed to argue what their significance is. It may be very minor, it may be nothing. Of course, you are entirely free to have a witness convince me that they have no relevance at all.

MR. ATLAS: Your Honor, the next two documents are Plaintiff's Exhibits 134 and 135, and we would withdraw them at this time.

THE COURT: Very good. That is the last on my list.

All right, gentlemen, I will have to leave a little bit early this morning, about 12:30, and I wanted to advise you also that Monday morning I have to hold a hearing at 9:30 so I won't be able to start until 10:30, and I invite your suggestions as to what you wish to do on Election Day.

As far as I am concerned, I am willing to sit a normal day because I can arrange to vote even so, but if any of you can't vote because of that, let me know.

MR. MANEY: I think in the absence of a substantial rebuttal case or any rebuttal case, we should be able to complete the trial on Tuesday, Election Day.

THE COURT: Delighted to hear that, although I don't know why I say that because this is an easier case to try than the next one. It may not be so easy to decide, but it is easier to try.

— — —

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

29,1974

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(Plaintiff's Exhibits 101, 102, 103, 106, 108, 111, 125 and 129 were received in evidence.)

(In open court.)

THE COURT: Mr.Breindel, are you ready to proceed?

MR. BREINDEL: Yes, at this time the plaintiff rests, subject of course, to the stipulations we have had regarding the deposition testimony.

THE COURT: Very good.

Mr. Maney, do you want to carry out your threat?

MR. MANEY: Your Honor, at this time the defendant moves for a directed verdict under Rule 50, Federal Rules of Civil Procedure, recognizing in doing so that the deposition testimony to be offered subsequently renders it almost impossible for the Court to rule on that motion at this time.

THE COURT: Yes. I think it is necessary for me under the circumstances to defer decision on the motion.

MR. MANEY: Very well.

Your Honor, the defendant calls Mr.George Van Cleave.

G E O R G E V A N C L E A V E, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MANEY:

Q Mr.Van Cleave, are you a general partner of Goldman, Sachs?

A Yes, I am.

Q Since what date have you been a general partner?

A The close of business, December 31, 1970.

Q When did you first join Goldman, Sachs?

A August 1, 1958.

Q In what capacity?

A I was in the cashiering department of the Chicago office of Goldman, Sachs & Co.

Q What was your education and employment history prior to joining Goldman, Sachs?

A I attended George Williams University in Chicago for one year, left school and went to work on the South Street with a brokerage firm in the cashiering department. I stayed there approximately a year and a half; enlisted in the Navy. Upon discharge four years later I went back to the securities business and attended Northwestern University night school.

Q Then you went with Goldman, Sachs?

A I went with the same firm I was with, which was not Goldman, Sachs, and then shortly thereafter I joined the firm.

Q Would you briefly give us your various positions at Goldman, Sachs since you joined them, up through March of 1970?

A Yes. I was an assistant cashier from August 1, '58, to approximately the same time in 1960, two years. I then was moved into the commercial paper department as a buyer of commercial paper. A buyer of commercial paper within the firm is that person or persons that deal in the issuing companies that buys the paper from the issuer, as a principal.

THE COURT: For Goldman, Sachs itself?

THE WITNESS: Yes.

A Then in February 1 of 1968, I was made a vice-president of the commercial paper department.

In August of 1968, I was transferred to the New York office to assume the Number 2 position in the department, being in charge of the day-to-day marketing activities of the department.

THE COURT: What was your title?

THE WITNESS: Vice-president in commercial paper.

Q You say vice-president; you were vice-president of the partnership?

A That is correct, the firm and other New York Stock Exchange firms sought and received approval from the Stock Exchange to make vice-presidents of a partnership, as long as they stipulated the department, and that was to set apart from other employees.

Q That is the New York Stock Exchange?

A Yes.

THE COURT: Goldman, Sachs is still a partnership, is it not?

THE WITNESS: Yes, it is.

Q You mentioned the buyer purchased notes as principal. And let me say preliminarily, all of my questions to you will relate to the time period 1968, 1969, and the first quarter of 1970, unless the question specifies otherwise; do you understand that?

A I do.

Q During that period, did Goldman, Sachs purchase notes from an issuer as principal and resell them as principal?

A Yes.

Q Did they do so in more than one instance?

A Yes.

Q Did they do so in almost every instance?

A Yes, just about all cases.

Q With respect to any note the maturity of 270 days or less, was it the almost unvarying practice of Goldman, Sachs to purchase and resell the notes as principal?

A Yes.

Q To your knowledge, was that true of other investment banking firms that were in the commercial paper market?

A Yes.

MR. BREINDEL: Objection, your Honor.

THE COURT: Overruled.

Q You mentioned, when you came to New York, you supervised the day-to-day operations. Would you explain a little more fully what that meant.

A Yes. I was in charge of the pricing, positioning and the buying and the selling of the paper, to be sure that the paper was purchased from the issuing company and had, in fact, got sold.

THE COURT: What does "positioning" mean?

THE WITNESS: Placing in our own inventory position notes that Goldman, Sachs would own.

Q How did you do the pricing?

A Each day we would price our paper to be competitive with other money market instruments.

THE COURT: Your paper, you mean the paper you had to sell?

A The paper that we had to sell for that day, yes, of the issuers. We would first of all look at treasury bills, which, of course, had the most premier investment, and we would look at CD's, Federal funds, bankers' acceptances, and also our competitors, the direct issuer of commercial paper, and by looking at those rates we make a determination of what levels we would be able to sell the paper.

Q Were there any other rates that you took into account in pricing paper?

A I think that pretty well covers it.

Q Did you look at bank loan rates?

MR. BREINDEL: Objection, your Honor. He is leading the witness.

THE COURT: I don't think the witness is going to state things like that if they didn't. I prefer you not lead. But I don't want the trial to bog down on this.

A We did look at the overall financing charges that would be charged us, and we also looked, of course, at the bank primary, which I overlooked. That was very crucial because in order to be sure that an issuer would use the paper market you had to pretty well be sure that you could lend him dollars; he could get his dollars in the paper market cheaper than at the banks.

THE COURT: There was testimony yesterday which

I didn't understand, frankly, about what treasury funds or Government funds are as distinct from treasury bills.

THE WITNESS: The Federal funds, that is the same day available funds that are on deposit in the major commercial banks that are on deposit with the Federal Reserve Bank, for their reserve position.

THE COURT: And is that a receptacle for investment or is it just a fac by which you can measure yields or what?

THE WITNESS: It is really both. It is really two parts to it. One, from being available for same day, meaning the funds are good on that day, they are used in a settlement of commercial paper transactions, in most treasury security transactions. Then, also, each commercial bank must, of course, keep a percentage of his deposits with the Federal Reserve, and those become Fed. funds, and one bank might have an overage, too many reserves, and quite often another bank will be short reserves, they will trade, there will be a price on those Federal funds for that day, so that when --

THE COURT: I see. Thank you.

Q Mr.Van Cleave, I show you Exhibit BN for identification, ask if you can identify what that document is.

A Yes, this is an organization charge on page 1 of

Goldman, Sachs & Co.

The second page is an organizational chart of the commercial paper department.

MR. MANEY: As general background I offer BN.

THE COURT: Is this as of a particular date, time or period?

THE WITNESS: 1/1/70 to 6/30/70.

THE COURT: I take it there is no objection?

MR. BREINDEL: I haven't seen a copy of it yet, your Honor.

No objection, your Honor.

THE COURT: This is now BN. It is not 314, I take it.

MR. MANEY: That was a prior exhibit number.

THE COURT: I will just change it.

(Defendant's Exhibit BN was received in evidence.)

Q Mr.Van Cleave, looking at the first page of Exhibit BN, would you please briefly identify each of these various boxes and what they represent, quite generally.

MR. BREINDEL: Objection, your Honor. I don't see the relevance of anything but the commercial paper department.

THE COURT: Overruled.

A The first box is the management committee of the firm which is our equivalent to the board of directors.

THE COURT: Is that on the second page?

THE WITNESS: The first page, your Honor, right at the top.

THE COURT: Mine are reversed.

All right.

A Our equivalent of board of directors, that establishes the policy and procedures of the firm.

Starting on the left, the Syndicate Department is the department that puts together underwritings of securities with other dealers.

The Corporate Finance Department, as you can see, is made up of five different areas, New Business is that person that sells all the services that you see on this sheet to potential clients.

Buying is the organization that works on the prospectuses and legal aspects of underwriting, and Private Placements, Mergers and Acquisitions and Lease Financing I think are self-explanatory.

Then, of course, we have Commercial Paper Department.

Municipal would be the municipal trading and municipal underwriting.

Trading and Arbitrage would be over-the-counter and general trading of stocks, and also arbitraging.

Foreign would be our international.

Security Sales would be those persons that sell the stocks.

Investment Research is the department that researches common stocks and, of course, makes recommendations on these.

THE COURT: It does not research, for example, commercial paper?

THE WITNESS: It does not research commercial paper. The commercial paper research, if you will, is called the Credit Department, and that falls under the Paper Department.

Investment Management Services is where we act as advisers on common stocks and other securities.

Administration and Operations would be what we call our back office people.

Below the trading area you see the breakdown of the various functions of that: blocks, convertibles, sorry -- corporate bonds, etc.

Q What does block trading consist of?

A Block trading is where you would do large pieces of common stock business with mutual funds or institutions which Goldman, Sachs is one of the top firms in that field, and they would be willing to take these large blocks of stock and get them done by taking them in for their own account and also reselling them.

Page 2 --

Q Are the individuals that are listed in these boxes the persons who are the head of each of these departments?

A Yes.

THE COURT: As of the date indicated I think?

THE WITNESS: Correct.

Q Turn to page 2, Commercial Paper Department.

A On the top, Bob Wilson, who is partner in charge of the department, and my role beneath him as coordinator, which you can see moves down to cover the buying and selling area. Then branching out to your left is the credit department that I spoke of. To the right are two former heads of the department, James Hemphill, resident partner in Chicago, from whom I learned the business, and John Rhoades who ran the department before Bob Wilson. We used them as consultants.

And moving down, we had the buying and the selling as broken down by the various officers throughout the country.

THE COURT: Okay.

Q Mr.Van Cleave, could you briefly explain what relationship, if any exists between the Corporate Finance Department and the Commercial Paper Department?

A The Corporate Finance Department, from the new business aspect of it, that person was the salesman for Goldman, Sachs, if you will, to help us get new issuing companies. As I mentioned, he was the salesman of all services of the firm.

THE COURT: Did you mention Mr. Whitehead?

THE WITNESS: Yes, Mr. Whitehead's department.

THE COURT: I can't read the title above his name there. Does that say corporate finance or what?

THE WITNESS: That says new business.

THE COURT: The major section is corporate finances?

THE WITNESS: That is correct. We have men that are assigned to the top 500 firms in the country, and they sell all the services, stocks, bonds, mergers, whatever, and so we would use those people in the solicitation of new commercial paper issuers.

Q Does the new business department have any role to play in connection with whether you will take on a company as an issuer?

A No.

THE COURT: If I get you correctly, then what you are saying is that the new business department helped only in securing new business for the commercial paper department, is that right?

THE WITNESS: That is correct.

Q With respect to the Management Committee, what are the functions of the Management Committee?

A They would set out the policy and procedures of the firm, and then each member of the Management Committee would have at least one of the various departments that are listed below responsible to him in a general nature.

Q Some of the individuals on the Management Committee also appear as heads of different departments, is that correct?

A That is correct.

Q Mr. Wilson was not a member of the Management Committee at that time?

A That is correct.

Q Who, if anyone, on the Management Committee had responsibility for the Commercial Paper Department?

A John Weinberg.

Q Is there a chairman of the Management Committee or was there?

A Yes, Gus Levy.

Q What role, if any, did Mr.Weinberg play in the day-to-day operations of the Commercial Paper Department?

A He really didn't get involved in day-to-day. He was more like working on budgets, salaries, general overall procedures.

Q Did Mr.Weinberg have anything to do with decisions to take on new issuers?

A No.

Q To your knowledge, in the time period we are talking about, did the Management Committee ever participate in the decision to take on a new issuer by the Commercial Paper Department?

A No.

Q Did the Management Committee during this time ever participate in the decision whether to cease offering the notes of an issuer?

A No.

THE COURT: Are you asking whether the committee did that or whether Mr.Weinberg did that or both?

MR. MANEY: I believe I asked about the committee. Let me ask the same question about Mr. Weinberg.

A The answers are all the same, your Honor.

Q Or any other individual member of the Management Committee.

A No.

Q Mr.Van Cleave, just as general background, would you tell us during this -- let's shorten the period, late 1969, early 1970, if you recall, what was the total volume in dollars being raised in this commercial paper market in this country?

A There is 40 billion outstanding.

THE COURT: What period?

THE WITNESS: Late '69, early '70.

Q Of that, what do you mean by "outstanding"?

A Outstanding paper in the commercial -- in the market.

Q You mean paper that was unmatured?

A Was still outstanding. The reason I state it like that is one can get confused with a volume figure, because the average maturity runs about 30 days, so you turn it over 12 times per year.

THE COURT: Much more per annum.

THE WITNESS: Right.

Q Was all of this 40 billion sold by dealers?

A No, the breakdown was 25 billion direct, and 15 billion dealer.

Q How many dealers were there in the market at this time?

A Six.

Q Do you recall what percentage of the market Goldman, Sachs had at that time of the dealer market?

A Of the dealer market approximately 45 per cent.

Q If in 1969, early 1970, someone walked in to Goldman, Sachs and said, "I have $500 to invest, may I buy some commercial paper," how would you handle that type of transaction?

A Paper is not availale in that amount. It is strictly a sophisticated investor's market, large transactions, million dollar average.

Q Million dollar average?

A Yes.

Q Would you give us a general description of the types of investors in this market at that time?

A Yes. Other corporations, mutual funds, pension funds, State and municipal governments --

THE COURT: Don't go too fast.

A -- Government, State and local, educational institutions, and also commercial banks.

Q Commercial banks buying for their own account?

A Commercial banks didn't identify all their transactions. I know most of the trades were done for the account of customer, but there was no way of our ascertaining that knowledge.

THE COURT: As in this case, for example?

THE WITNESS: Right.

Q Mr.Van Cleave, I show you Exhibit CT for identification, ask if you can identify what that document is.

A Yes, this shows outstandings of various type securities in the open market.

Q And the source from which this data is taken appears on teh ledger general on the second page?

A Federal Reserve.

MR MANEY: As background, your Honor, I offer Exhibit CT in evidence.

MR. BREINDEL: May I have a moment on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BREINDEL:

Q Did you prepare this document, Mr.Van Cleave?

A No.

Q Do you know who did prepare it?

A I do not.

MR. BREINDEL: On that basis, your Honor, I would object to its admission in evidence.

THE COURT: I understand you do know what the source is, though.

THE WITNESS: Yes, I do.

THE COURT: How do you know?

THE WITNESS: It is here under "A", source, Federal Reserve.

THE COURT: Can you tell me anything about the nature of these statistics; are they regularly-issued? If so, what do they purport to establish?

THE WITNESS: Well, they establish the amount of outstandings in the various securities.

THE COURT: Was it your custom at all to make reference to such documents as these during the course of your business?

THE WITNESS: I would review them on a monthly basis, but not put together in this form.

THE COURT: Are they generally accepted within the commercial paper industry, if that is the right word to use, as accurate descriptions of the material which they contain?

THE WITNESS: Yes.

MR. BREINDEL: One further question.

BY MR. BREINDEL:

Q Mr.Van Cleave, I believe you stated that the source of this was the Federal Reserve Bulletin, is that correct?

A Yes.

Q Do you know that other than from reading this document?

A I don't, but I see them on a monthly basis and it looks like the same type of information that I always review.

THE COURT: Who prepared this very document, do you know? Is this from the Federal Reserve or is this drawn from its document, in turn?

THE WITNESS: It looks to me as if -- because I do see these bulletins -- that the columns are taken out and photographed on this page. That is what it looks like to me.

THE COURT: Are you in a position to represent to me how this document was put together, Mr. Maney?

MR. MANEY: I will represent that this document and a number of others which will be offered as statistical information concerning the market were prepared by personnel of Goldman, Sachs at the request of counsel, as summaries of data compilations available, were furnished to liaison counsel for all plaintiffs in these cases who had an opportunity to examine on voir dire at enormous length, and in the absence of bringing into court a vast sum of data --

THE COURT: Is the sum and substance of it that you can represent to me that in your understanding and knowledge of the situation, supplemented by testimony of the witness, the figures before me are the figures that were originally issued by the Federal Reserve?

MR. MANEY: These were taken from Federal Reserve bulletins, your Honor.

THE COURT: I am satisfied with that.

Received in evidence.

x (Defendant's Exhibit CT was received in evidence.)

BY MR. MANEY:

Q I believe you testified, Mr. Van Cleave, that you were pricing commercial paper with reference to other money market instruments, is that right?

A That is correct.

Q Were you dealing with a single price? Was all commercial paper price the same on a given day?

A Not necessarily.

Q What factors affected the price as between different issuers?

A It would depend upon maturity. And also in some cases it could depend upon amount, but mostly it would be the maturity range that the issuer was seeking.

Q What criteria did you use in determining why or the differential depending on maturity?

A Well, the direct commercial paper market was, of course, our largest competitor, if you will.

THE COURT: They were the issuers?

THE WITNESS: They were the issuers and they represented the major portion of the market, and they would establish various rates for various material categories; commonplace would be five to 29 days at one date, 30 to 89 days, then another, so on and so forth, and therefore we would establish a pattern somewhat similar to what the direct issuers would use.

However, then we also had to be sure that in each various category that we were competitor with these other instruments, such as bills, bankers' acceptance and CD.

Q What factors went into any difference in price depending on marurity? Are you saying that a 30-day note might be priced differently than a six-month note?

MR. BREINDEL: Objection. I think the witness is being led.

THE COURT: He is asking whether that is what the witness is saying or not.

A That is what I am saying. I am saying by following these various patterns, we'd have a 30-day rate.

It could break at 90 days sometimes.

THE COURT: Is it any different than it is with all debt obligations, that the shorter the obligation, the lower the rate of interest?

THE WITNESS: In the short term money market, that can change. Sometimes the curves are inverted, during tight money periods. Where it looks as if we are at the end of a cycle, the rates might be coming down, and an issuer sees this, he might be very willing to pay a higher rate for a 30-day maturity than a one-day maturity.

THE COURT: I see. All right.

Q Do you know what the phrase "buying rate" means?

A Buying rate is that rate which is the total charge or the total rate charged to the issuing company. This would include our spread.

Q Explain what you mean by that.

A We quote the cost of paper on a net basis, selling the commercial paper at usually an eighth of one per cent lower than the rate at which we purchase it, that eighth of one per cent being our commission or spread as we call it.

Q Could you give us an example of that?

A We sell a 90-day note at 9-7/8. We would purchase it from issuer at 10, because of the fact that it is discounted, you would buy it at a higher rate.

THE COURT: You get 10 per cent from the issuer but you only give 9-7/8?

THE WITNESS: Per annum.

Q Did you say discount?

A I did, yes.

Q Was all commercial paper during this period sold on a discount basis?

A 99 per cent, yes.

Q Was the rate that you were quoting on the sales side the rate returned to the investor?

A That was the discount rate, so therefore the effective yield would be somewhat higher.

THE COURT: I understand these things, and you have written about them in your brief, anyway. I don't really see what they have to do, except some interesting background of the case, but I do understand it. There is nothing unique about a discounted commercial paper. I mean other obligations are incurred on a discount basis as well.

THE WITNESS: Yes, treasury bills.

THE COURT: Including my own borrowings from the bank, from time to time, loans of various types.

THE WITNESS: CD's are one exception. For some reason the banks, when they started that market, sold them on an interest to follow basis.

MR. MANEY: Your Honor, on the basis of the same representation, I offer Exhibit CL in evidence.

I represent, your Honor, that, again, this is a compilation taken from public sources that appear in the column entitled "Source," on the second page.

THE COURT: Is this just for a different period?

MR. MANEY: These are different statistics, but I will ask the witness.

THE COURT: All right.

Q Mr.Van Cleave, could you explain what the tables on CL for identification are?

A Yes. These are money market rates for a period of January 4, '69 through April 4,' 70, stating by maturity the interest rates on various short term instruments, also Federal Reserve source.

MR. MANEY: CL is offered in evidence.

THE COURT: I am admitting it on the same basis as the last.

xx (Defendant's Exhibit CL was received in evidence.)

MR. BREINDEL: I take it, your Honor, I have a continuing objection to this type of document.

THE COURT: Yes.

Q I show you quite a different document, Mr.

Van Cleave, Exhibit CO for identification.

THE COURT: I also take it, Mr.Breindel, that you don't dispute the rates that are quoted here.

MR. BREINDEL: Based on Mr. Maney's representations, I don't.

THE COURT: All right. Thank you.

Q Will you explain what CO is, Mr.Van Cleave.

A Yes. This is a document that is prepared at Goldman, Sachs which gives the three-month commercial paper rate in comparison to the three-month commercial bank rate plus a 10 per cent compensating balance, and this document is used in the solicitation of potential new issuers to point out the cost savings that are derived from commercial paper.

Q In other words, these are costs to a borrowing company or an issuer, is that right?

A That's right.

Q Why do you use a 10 per cent compensating balance?

A It was commonplace in the trade at that time that most companies when borrowing from their banks would have a 10 per cent compensating balance for having the line, an additional 10 per cent, if they used it, and since most, well, most commercial paper issuers had bank lines backing commercial paper, why, we could show that if they had to use the banks, there would be this additional 10 per cent cost.

Q Did most issuers have bank lines in the full amount of the commercial paper outstanding during this period?

A Quite a few did, but not all.

Q Did direct issuers have bank lines for 100 per cent of the paper outstanding?

MR. BREINDEL: I object, your Honor, on the ground that the issuer in question here was not a direct issuer and I don't think the testimony is relevant.

THE COURT: I would like to know the full story of the dynamics of the market, but I am confused. I thought your first question was about issuers, or were you asking -- what was the question that was just answered?

MR. MANEY: I am asking about issuers using direct issuers, your Honor. I am just making it clear that that question included direct issuers.

THE COURT: Can we start again with this line of questioning? I am a little confused.

MR. MANEY: Yes.

Q Mr.Van Cleave, during 1969, early 1970, were there companies issuing paper both through dealers and directly that had less than 100 per cent line coverage of the paper outstanding?

A Yes.

Q Do you recall what the line coverage was of General Motors Acceptance Corporation at this time?

A About 30 per cent.

Q Do you recall what the line coverage was of Ford Motors Acceptance Corporation at that time?

A About 25 per cent.

Q Do you recall what the coverage was of Sear-Roebuck Acceptance that period of time?

A About 85 per cent.

Q Were there also industrial companies issuing through dealers that had less than 100 per cent line coverage?

A Yes.

MR. MANEY: I offer CQ in evidence, your Honor.

MR. BREINDEL: No objection.

THE COURT: All right, received.

(Defendant's Exhibit CQ was received in evidence.)

Q During this period again, when issue s came into the market -- was that the phrase?

A Yes, correct.

Q Did they do so for a particular time or how did you work out these maturity schedules?

A Well, it would depend upon the issuer. For example, there are a number of issuers that use the market seasonally. Let's say like H.J. Heinz would buy tomatoes to make the ketsup; they need a tremendous amount of dollars when they are buying the tomatoes, but when they sold the ketsup they get their dollars back, so they have a high point and a low point.

We would try very hard to keep maturities out of the high point and try to put them in a period of time when they would have a cash in-flow from the sales of their product.

There were other issuers such as finance companies, utility companies, Penn Central, who were in the market on a continuous basis, and maturities from a standpoint of worrying about a seasonal point of view were not as crucial.

THE COURT: In those cases what did you try to do?

THE WITNESS: We tried to keep as best a mix as best we could of not crowding maturities and making any one time period heavy concentration, but we would offer them pretty much across the board, whereas we would offer them from five days on out to 270, as opposed to maybe a Heinz in a 30 to 60-day period.

Q Mr. Van Cleave, may I briefly go back to this organizational chart, Exhibit BN. You have it in front of you.

On the commercial paper department, was there a department that is not shown on that chart that worked on a day-to-day basis with the commercial paper department?

A Yes.

Q What was that?

A The note and discount department.

Q Will you explain what the note and discount department was?

A That was a part of this, also on page 1, the operations area. These were the people that did the calculations and the processing of the transactions, kept all our records in the commercial paper department for the commercial paper department.

Q Was there any other department that worked with commercial paper on a day-to-day basis?

A Pardon me?

Q On the day-to-day operations -- you have explained corporate finance matters -- was there any other department?

A No, just this note and discount.

Q The note and discount handled the financing of commercial paper?

A Yes.

Q Who is in charge of the note and discount department?

A Charles Duffy, who in turn reported to George Doty, administrative partner.

Q Mr.Van Cleave, would you explain what the phrases, green, white, yellow sheets mean?

A Yes. Those are credit memoranda that our credit department prepares.

The white sheet is a duplication of a company's annual report, and it covers two fiscal years.

The yellow sheet is what we call our information sheet. This sheet contains a brief description of the company, and also would list, instead of all the financial figures of a company, certain key figures, such as the total assets, net worth, current assets, current liabilities, for one year, for the last fiscal year.

Then they also show the comparison of the last three years of sales and profits, and also listed banks of deposit of the commercial paper issuer.

Q What was the purpose of listing the banks of deposit?

A It was commonplace when commercial banks would purchase commercial paper that they would often make a check with one of the other banks listed on that information sheet towards their experience with the company.

Then the last item was a green sheet, and the green sheet was an interim information sheet. When anything would come out, say, as quarterly earnings, or if some company were to do a financing, any type of interim information, that was prepared on a green sheet.

Q What was done with these sheets once they were prepared?

A Well, they would be distributed to investors.

Q How were they distributed?

A There was a number of ways to do that. Some investors would prefer to have the financial information before they would buy the securities, or the paper, so therefore we would send the information to them before the time of sale.

Commercial banks were a good example of that. They would always want to have a list, or a -- yes, a list of all the information that would come out on any of the companies that they would purchase, and rather than wait for a time when they purchased the note, we had standing instructions with most of them to deliver the credit information direct as soon as it was printed up.

And the other way would be that we would always send out the latest credit information with a copy of the letter of confirmation after a commercial paper sale.

Q I show you Exhibit UG, and ask if you can identify that document for the Court.

A Yes, this is a copy of a commercial paper sale, internal document in Goldman, Sachs.

Q Who prepared this form?

A The salesman.

Q When?

A At the time of sale.

Q At the time of the telephone conversation?

A That is correct.

Q Can you identify this particular -- what do you call this thing? Is this a sale order?

A Special order sale is what I would call this.

Q Can you identify this particular special order sale?

A Yes.

Q What is it?

A This is sold to Union Bank L.A., 600,000 Penn Central, stating the maturity and the rate, today's discount, proceeds, etc.

Q This is a sale of the note that is in this lawsuit, is that right?

A Pardon me?

Q This is the note that is involved in this lawsuit?

A Yes.

Q Will you explain what the phrase "special order" means?

A This is paper that is available and is not owned -- in other words, this is paper that is available for sale that we have not yet purchased, and allows the investor to tailor the maturity date.

Q How does that work, Mr. Van Cleave?

A Well, we offer for sale each day a block of commercial paper depending upon what the company's needs are for that day, and we start off by not filling the maturity. We try to talk about these desired maturities that I referred to earlier, but we found it very effective, rather than lock up the 30-day maturity when one might be looking for a 33-day maturity, to leave that open, and then let the investor select his own maturity date.

Then that is accomplished during the day by the salesman working on this paper, and reporting it to the buyers in New York, and then as soon as we filled the amount of paper that that issuer needs for that day, then that is the end of the sales.

Q Now, there has been the phrase, "tap issue," which has come up in this trial. Is that the same special order?

A Yes, but coupled with that would be tap issue, meaning that the paper is available for same day release from a major New York bank, and is not filled in as far as maturity is concerned.

Q How does that work? Do you know how it worked in the case of Penn Central?

A Yes.

Q Would you explain the mechanics of the tap issue special order in the case of Penn Central?

A I will take the transaction right from the beginning. The salesman makes a sale, reports what that sale is.

THE COURT: To whom?

THE WITNESS: To the buyer of commercial paper, the Goldman, Sachs buyer.

He would say, "That's good." And then he would then, in turn, confirm it to the person who is buying the paper from us, the investor.

Then at the end of the sales day we would report that transaction to the railroad, giving them the details and also giving them the figures, which, of course, would be the eighth higher than the rate you see on this selling rate.

They in turn, would telephone the Morgan Guaranty Company in New York, saying,"Please deliver to Goldman, Sachs Co.," versus payment 600,000, maturity date, in the designated amount.

Morgan Guaranty would deliver that note to us for payment. We pay Morgan Guaranty. We take in the note, be sure it is authentic by checking signatures, etc.

We then turn around and see that it should be delivered to the Irving Trust for the account of Union Bank. We turn around and deliver that to Irving Trust versus the dollars that are due us.

THE COURT: Then you deposit the check in your bank account?

THE WITNESS: What we usually do is have our account credited at Irving. We keep accounts at all the major banks.

Q You say it is delivered from Morgan to you, and you pay for it. You are buying as principal?

A Yes.

Q You are selling as principal?

A Correct.

Q Even though it is a special order sale?

A Right. Even though we have the sale ahead of time, before we have actually made the purchase, we still buy everything as principal.

Q Do you know who filled out Exhibit UG for identification?

A Yes. Cliff Coleman.

THE COURT: Los Angeles?

THE WITNESS: Salesman in Los Angeles.

MR. MANEY: I offer Exhibit UG in evidence, your Honor.

MR. BREINDEL: A brief question on the voir dire, your Honor.

VOIR DIRE EXAMINATION

BY MR. BREINDEL:

Q Mr. Van Cleave, you see the date, discount date in the upper right-hand corner?

A Yes.

Q Is that the 16th or the 13th?

A Looks like the 16th. 16th.

Q Do you know who if anyone changed the date? There appears to be a date change there.

A I do not.

MR. BREINDEL: I have no objection.

(Defendant's Exhibit UG was received in evidence.)

THE COURT: What does it mean, it says, under special instructions, "due bill okay"?

THE WITNESS: In cases where we weren't able to get the note immediately available, and we would ask for permission to deliver what we call a due bill, which is a trust receipt signed by an officer of Goldman, Sachs & Co., that they would be willing to take that until we get the note, and during this period of time it was very hectic, the volume was tremendous, and so we tried where possible to get approval to deliver the due bill even though we had the note, because we had only had a 45-minute turn around from the time that Morgan delivered to us, and we delivered to Irving, about five or six hundred transactions a day, and if we didn't get the note in we didn't get paid, so what we try to do is say, "Will you take a due bill, and if they did, then we'd send it over 10:30, 11:00 o'clock in the morning.

THE COURT: All right.

MR. MANEY: May we have permission from the Court to place a file cabinet in the courtroom.

THE COURT: Okay.

(Recess.)

BY MR. MANEY:

Q Mr. Van Cleave, just before the recess, you were discussing delivering the note to the Irving Trust Company against payment.

A Correct.

Q Did Irving give you a check which was deposited in Goldman, Sachs' account?

A Yes, they would credit our account at the bank, at their bank.

Q Was that in any way different from giving you a check?

A It works out to be the same, except rather than have that piece of paper, why, they just simply give us a credit advice as opposed to a check which we would redeposit.

THE COURT: Mr. Maney, I am unable to tell at this stage of the game whether any of these details are important as far as this case is concerned, but I would think that 95 per cent of what we have been dealing with is undisputed. The question is whether the nature of the market is as significant a factor in this case as the defendant asserts it is, and the details don't need to be refined quite so much. Maybe I don't understand what you are trying to bring out, whether they were paid by check or --

Q Was Goldman, Sachs paid in particular types of funds?

A Federal funds.

Q Why?

A Because Federal funds are same day available funds, and if one were to be paid, for example, in clearing house funds, there would be loss of a day's interest.

THE COURT: Could you tell me what you consider to be the significance, the fact that Goldman,Sachs was paid that way?

MR. MANEY: Your Honor, perhaps as an offer of proof, it is the defendant's position, the nature of this market, where a single day's interest can be so substantial in relation to the volumes of paper being sold, compresses the entire day into a very rapid operation which is part of the circumstances which make it impracticable to engage in rather lengthy detailed discussions about the financial condition of the companies.

THE COURT: I understand that. Even if the amounts involved didn't deal with such great amounts of interest, when you handle 400 transactions a day, obviously, by definition, time is even rarer than money, you can't spend very much time on each telephone call. I am aware of that. I don't really see -- I don't want to spend any more time on it -- that the fact that Goldman, Sachs wants to get paid in a hurry, however, or by same day funds, and I can sympathize with them for wanting to do so, is binding on the plaintiff in this case. The nature of the market is relevant, but I don't consider how Goldman, Sachs gets paid a part of the nature of the market between Goldman, Sachs and the people that buy from it.

BY MR. MANEY:

Q Mr.Van Cleave, if Goldman,Sachs does not deliver the note on the day of the purchase but delivers it the next day, does that have any effect on the investor?

A Yes, the investor would get one day's less interest.

Q So the investor wants the same day delivery, too?

A That is correct.

Q I show you Exhibit UB for identification, and ask if you can tell me what that document is.

A Yes, this is a copy of the sales bill.

Q Sales bill?

A Yes.

Q What is a sales bill?

A This is a copy of the transaction in detail with the note, the denomination of the notes and the dollar amount. It is attached to the note and delivered with the note to the bank.

THE COURT: To the buyer bank?

THE WITNESS: To the delivery bank.

Q In this case Irving Trust Company?

A Correct.

Q Does this sales bill, Exhibit UB for identification, reflect the transaction which is the subject of this lawsuit?

A Yes.

MR. MANEY: I offer Exhibit UB in evidence.

MR. BREINDEL: Voir dire.

VOIR DIRE EXAMINATION

BY MR. BREINDEL:

Q Mr. Van Cleave, there are penciled notations on here, I notice, such as the number 785 and 181X500, 781. Do you know who put those on?

A I do not.

Q Do you know when they were put on?

A I do not.

Q Is it your belief that they were put on this document on or about March 16, 1970?

A I would have no idea.

THE COURT: Is this kind of penciled material normally a part of the document when it goes to the delivery bank?

THE WITNESS: No.

MR. BREINDEL: I have no objection to its admission, your Honor, if we can stipulate that it would be without the notes, unless and until such time as a witness is produced to explain the handwritten notes.

THE COURT: All right. I don't suppose Mr. Maney cares one way or the other, do you?

MR. MANEY: No.

THE COURT: It is accepted under those circumstances.

(Defendant's Exhibit UB was received in evidence.)

Q It is your testimony, Mr.Van Cleave, that the sales bill, Exhibit UB, was delivered with the note against payment to the Irving Trust Company, is that right?

A Yes.

Q And this document states, "We acted as principal in this transaction," is that correct?

A That is correct.

THE COURT: Where? Oh, yes.

Q Mr.Van Cleave, the phrase "blue sheets" has come up in this trial. Can you explain what blue sheets are?

A Yes. Blue sheets are a call report in writing on a client.

THE COURT: Telephone call you mean?

THE WITNESS: Or a personal visit.

Q What kind of client?

A It could be a client that is an issuer or a prospective issuer or also could be an investor.

Q And the same company could be both the same time?

A Yes.

Q Where are these blue sheets lodged or filed?

A They are put in what we call the credit file.

Q I show you Exhibit A for identification and ask if you can tell me what this is.

A Yes, this is the Penn Central Transportation Company credit file.

Q Are there blue sheets in that file?

A Yes, there is.

Q In this period, '68, '69, early 1970, was there any policy at Goldman, Sachs with respect to who had access to a credit file, such as Exhibit A for identification?

A Yes. In the case of an issuer credit file, access to the file could be made with approval from a general partner or any partner, general partner; the new businessman who was assigned to the account, one of the buyers of commercial paper, and when I say that, again I mean the Goldman, Sachs buyer.

THE COURT: You say one of the buyers?

THE WITNESS: Any of the buyers, pardon me.

The credit people, anybody in the credit department, and that would be it.

Q Do salesmen have access to the credit file?

A The salesmen did not have access to any issuer credit file. They, of course, would have access to an investor credit file.

Q Was the same rule applicable to salesmen of stocks as salesmen of commercial paper?

A Yes.

Q How long had this policy been in effect?

A As long as I can remember.

Q Do you know what the reason for the policy was?

A Yes, because there would be information that we would receive in the credit file which was confidential. For example, if you had news of an impending financing of some kind, which would be natural in the course of your conducting your day-to-day credit responsibilities, it wouldn't be very good if information of a common stock deal that was coming got out to someone entirely out of the firm, because, you know, stock offering can dilute the stock, change the price, and --

THE COURT: You had inside information?

THE WITNESS: Right, just shouldn't get out.

THE COURT: Insofar as an investor's credit file is concerned, let me be sure I understand, that would contain credit material as to an investor, in other words, somebody who is thinking of buying something that you might sell?

THE WITNESS: That's right.

THE COURT: And you didn't have the same obligation with regard to them as you had with regard to those who were issuers and so on, is that correct?

THE WITNESS: That is correct.

THE COURT: And it is for that reason that you might allow access to an investor file and not an issuer file?

THE WITNESS: Still it would only be the same people. In other words, we wouldn't let a stock salesman --

THE COURT: I thought you said a salesman might look at an investor file but not an issuer file.

THE WITNESS: That's right, a commercial paper salesman would certainly be able to look at an investor file, but it doesn't mean --

THE COURT: To see whether the person who was proposing to buy from you would be able to swing the transaction?

THE WITNESS: Correct, or if he took over an account from someone else, get the history. But a stock salesman would not have access to a commercial paper investor file.

THE COURT: I see.

Q Mr.Van Cleave, could you very briefly go through the routine of a normal day in the commercial paper department, starting whenever you think it the logical time to start?

A Yes.

MR. BREINDEL: Whose routine?

MR. MANEY: Commercial paper department routine on a normal day during late 1969, early 1970.

A The best place for me to start would be at the very close of the business day. Same day transactions -- by same day, I mean those transactions that are bought and sold for delivery the same day, which represent about 99 per cent of our business, must be consummated by 12:30 New York time. These transactions must be --

THE COURT: Excuse me. I have another matter.

(Pause.)

THE COURT: All right. You were saying that 99 per cent of your business was same day business?

THE WITNESS: Same day delivery, right, and in order for us to process it and make all these deliveries I spoke of, we had to cut off sales by 12:30 New York time.

At the end of that time period, we would then go about finding out what we had available for sale the next day. The way we did that was, of course, we had our records of all our maturities, and that's what we would start with, what did we have of issuer's paper maturing the following day. We would list that. We would also have an on-going conversation with most all the issuers as to when they might need additional money, or when they might not need quite as much that is maturing, and we would keep a record of that. We would put all that together. And we would then make a determination, as I mentioned earlier, as to how I would have done that, as to what the rates should be for the following day.

We would then get on a conference call, which would include all our salesmen, and we had 25 salesmen in Chicago, Boston, St. Louis, and Los Angeles. We would get on the conference call, and we would read them the paper that we had available for sale the following day, also as to what we felt the interest rate levels would be.

In addition to that, we used to read what we called our top ten list, which represented the top ten inventory positions on paper that we owned, already purchased, owned by Goldman, Sachs. That was another source document that they had to use to sell commercial paper in inventory sheet of our own paper.

By that time, it would be pretty close to the end of the day, and then in the morning, we would come in and we would have a very quick conference call which would then fine tune all these things we had chatted about, any change in availability, and particularly the setting of the interest rates.

Again, I'd look at all of these things that we spoke about earlier to determine what those rates should be.

THE COURT: I take it that the salesmen outside New York didn't have discretion about the rates or anything.

THE WITNESS: Nor the salesmen in New York either. No salesman. That was a decision of myself and the buyers.

THE COURT: All right.

Q May I just at this point interrupt and ask if you can identify Exhibit DX, Mr.Van Cleave.

A Yes. This is an inventory sheet that I spoke of, which is the document that shows all the paper that we owned for our own account, that they would be selling from.

Q Now, this particular document, Exhibit DX for identification, is dated as of a time on that date, do you see that?

A Yes.

Q When would this particular document have been used?

A This was prepared at the close of business, so it was done by 1:30 Eastern Standard time on March 12th, and this would be the document that we would use for sales on the 13th.

THE COURT: Did you say you read this?

THE WITNESS: No, this was the inventory sheet. That is why we had this, what I call, top ten because we couldn't possibly read all of this. This was for use on the 13th because we'd Brinks it out, send by Brinks to the regional offices so they would have it first thing in the morning.

THE COURT: Telex system of some kind?

THE WITNESS: We use the Brinks delivery system. They guarantee delivery in one day anywhere in the United States. So this was a document used for sales on the 13th.

THE COURT: As a matter of curiosity, obviously the material at the top of the sheet saying "Yields" doesn't indicate a specific holding, does it; that is just statistical material?

THE WITNESS: Right.

THE COURT: F.N.M.A. rates, what does that mean?

THE WITNESS: We were also dealers in Fanny Mae National Mortgage Association. We put those on the same sheet.

THE COURT: Okay. When you say March maturities, now you are coming to the list of things you did have on inventory?

THE WITNESS: That is correct.

THE COURT: Do you want to go across the column and tell me?

THE WITNESS: Right on the top, the interest rate that we could sell that note of Avco Delta would be 8-1/2; the name of the corporation, the maturity date, the amount, and then the denomination.

THE COURT: What is the amount, 500,000?

THE WITNESS: Yes.

THE COURT: That is one note?

THE WITNESS: One note. Next one below, you see 750.

THE COURT: Right. The case of Penn Central is one-500 and one-100?

THE WITNESS: Yes.

THE COURT: Thank you.

I may have to interrupt the proceedings shortly before I expected because I have got a matter involving a man's surrender which I have to take. Let's keep going till then.

Q Mr. Coleman in the Los Angeles office on March 13, would he have had this particular inventory sheet available to him?

A Yes.

MR. MANEY: I offer Exhibit DX in evidence, your Honor.

MR. BREINDEL: Some questions, your Honor.

VOIR DIRE EXAMINATION

BY MR. BREINDEL:

Q When was DX prepared?

A On the 12th.

Q By whom?

A By the note and discount department.

Q Has DX been in Goldman, Sach's files since the 12th?

A Yes.

MR. BREINDEL: No objection.

THE COURT: Thank you. Received.

xxx (Defendant's Exhibit DX was received in evidence.)

BY MR. MANEY:

Q You also mentioned, Mr.Van Cleave, same day sales close at 12:30 New York time. The sale in this case was made by the Los Angeles office. When would the

Los Angeles sales for same day delivery terminate?

A 9:30 A.M.

Q Pacific time?

A That's right. The normal working day -- just by way of background -- for the West Coast salesmen, they get in at 6:00 o'clock in the morning and leave about 2:00 or 3:00 in the afternoon.

Q It is true that all the Goldman, Sachs offices operate on a New York time selling day?

A Correct.

Q In discussing availability, is that availability of special order paper?

A That is right.

Q Who makes a decision as to how much is available?

A Well, that is something that is worked up between ourselves and the issuing company. As I mention, we have the maturities that we work from, and also the desired amount that the issuer would like to receive on that day, and we make a joint decision, if you will, as to how many dollars we think or they think we should get in the paper market. Some of that would depend upon how much would be in the inventory. That would be a factor.

Q I believe you were on the brief morning conference call. Would you continue with a normal day?

A Yes. After, as I call it, fine tuning the interest rates, we would then begin the sales day. Then, from that, we would usually start about 9:30, when we would start to get going, and really then hopping by about 10:00 A.M. So we would have this two and a half to three hour period where we must put together on an average day four to five hundred transactions, and most of which are done exactly as I described the way the transaction went with the Union Bank.

A phone call from the salesman to a buyer of commercial paper, who would then confirm that amount to him. We would continue along that line until we got all our available paper for that day sold, as much as we possibly could sell.

During the course of the day, then, it was my responsibility to watch this position, to see how much paper we had, to keep a very close tab on interest rates. I used the 25 people all over the country to keep me posted as to what they saw in the marketplace of competing instruments that helped me in keeping our firm competitive, to be sure we were getting the best rate for the issuing company while still being competitive on the sales side, sure that we gave the investor a proper deal.

Then at the end of this sales day, around 12:00, 12:15, we would see just exactly what paper was unsold, make a decision as to whether we put it in our position or not, and then that would end that one sales day.

Q How, if you know, how did the concept of inventory develop?

A As you know, the business started, Goldman, Sachs, in the late 1800s, and from then on up until the mid-sixties, the procedure for operating the commercial paper market was to contact an issuing company, buy the notes from them about a week or so ahead of time, select a maturity date, have them mail the notes in to us, and then we would begin to sell them, a week, ten days ahead of time sometimes. And the reason for that was the markets were not volatile, so there was very little, if anything, for either side to lose, because the rates didn't change that much. The volume was very light. I mean, when I got into the business, the total market was only about two million, opposed to that 40, as it was in the seventies. So that was a way to do business. It was easy. No one got hurt by it and you worked everything off of the inventory.

Then as we got into the tight money market of the sixties, and we found that it was very, very expensive to carry paper and to also lose on interest rates, as rates were increasing, the fact that that spread is so narrow, I mean just one-eighth of a move and you break even, we found a better way to operate was on this tap issue, tailor the maturity concept, let the investor select the maturity.

MR. BREINDEL: Your Honor, I am going to move to strike all the testimony starting with the tight money market in the sixties on the ground that it was not responsive to Mr. Maney's question, which was, how did the concept of inventory develop?

THE COURT: All right. If it wasn't responsive I suppose Mr. Maney could ask what did you do next, and that would be the answer to it, and it would be admissible, so the objection is overruled.

MR. MANEY: Thank you, your Honor.

Q What were some of the expenses incurred in carrying inventory as you got into the late sixties?

A The two most expensive costs that occurred were negative carry and cost of markup.

Defining those for you, negative carry means that it cost us more to finance than what we were earning on the paper that we purchased; not uncommon during this period for that to be a half to three-quarters of one per cent.

Markup, meaning a markup in yield or a markdown in price, would mean that we'd have to increase the yield on the paper in order to sell it because interest rates were rising.

THE COURT: There was a loss of principal?

THE WITNESS: Yes.

Q With respect to the question of negative carry, let me show you CZ and CS for identification, and ask you if you can explain what these two exhibits are.

A CZ is the Goldman, Sachs buying rate for Penn Central papers, January 1, 1969 to April 2, 1970, the total cost.

Q This is what you pay for Penn Central?

A This is right, this is what we charged the railroad.

CS is the averaged financing rates for the same time period.

THE COURT: Average of whom?

THE WITNESS: Of the total cost of financing to us, to Goldman, Sachs, to finance inventory. This includes the two methods of borrowing that we have open to us, banks and repurchase agreements.

THE COURT: Repurchased by the issuer or whoever you bought it from?

THE WITNESS: No, we would have a piece of paper, say of a 30-day duration, and would find an investor who would have dollars available for one day. We would sell the 30-day note and agree to repurchase it from him and this was a good technique to use because you could do that at a cheaper rate than you could borrow from the banks, and help the investor find a one-day investment.

MR. MANEY: I offer CS and CZ in evidence, your Honor.

MR. BREINDEL: Voir dire, your Honor.

VOIR DIRE EXAMINATION

BY MR. BREINDEL:

Q In respect to CZ, Mr.Van Cleave, do you know when that was prepared?

A I do not.

Q Do you know if it was prepared subsequent to March 16, 1970?

A I do not.

Q Do you know who prepared it?

A No.

Q Did you ever discuss its preparation with anyone other than counsel?

A Other than counsel?

Q Other than your counsel.

A I know our note and discount people -- yes, I do remember discussing the buying rate portion of it, and they are the people who prepared all those things.

Q Was CZ prepared under your supervision?

A Was I right there watching them prepare it or --

Q Were you responsible --

THE COURT: Let's get down to brass tacks. In order for something of this kind to constitute evidence in a lawsuit, I have to be satisfied that it is valid, it is truthful.

How do you know that this does actually represent what it does say it represents?

THE WITNESS: Being in the business and seeing the numbers all these years, the numbers look right to me as I look through these various time frames.

THE COURT: You are not in a position to say how it was prepared?

THE WITNESS: I am not.

THE COURT: Are you, Mr. Maney?

MR. MANEY: Yes, your Honor. May I at this point, your Honor, cite to the Court Rule 1006, Federal Rules of Evidence.

THE COURT: I always have my copy of the rules in the wrong room. It is in the robing room. Cite it.

MR. MANEY: I have underlined a brief portion.

THE COURT: That is all right.

MR. MANEY: I represent to the Court that a number of these documents, and I will at this time also offer in evidence Exhibits CU and CW, were prepared as summaries of voluminous data.

THE COURT: I am not for a moment suggesting that such a document cannot be introduced into evidence. I am just asking for an explanation of the preparation.

MR. MANEY: Your Honor, these were prepared pursuant to the direction of Mr.Van Cleave and his partner, Mr. Wilson, at our request, at the request of counsel. They were made available to liaison counsel for plaintiffs, and I suggest that that is the same as making them available to Mr.Breindel who had a lengthy opportunity to look at the basic raw data, to examine the individuals who physically prepared it, and I suggest that it is untimely --

THE COURT: I don't want to bog down here, Mr.Breindel. I don't know whether you are making these objections because you think a careful lawyer ought to make them every time, or unless you have some reason to believe that this material is not accurate. If it isn't accurate I would like to explore it.

If it is just a routine objection, then I would prefer not to have it.

MR. BREINDEL: It is more than a routine objection, your Honor. I object to this witness being examined as to documents which were prepared after March 13 and which he didn't prepare.

THE COURT: I don't think that makes the slightest bit of difference. If this material gives us the history of the dates to which it refers, that's all we want.

MR. BREINDEL: It is more. The witness is being asked to interpret these documents and comment on them. If they are simply offered in evidence as such and Mr. Maney represents that they are accurate summaries, I will accept that.

THE COURT: Do one thing at a time. The question is, first of all, whether the document is admissible in evidence.

The second question is whether he is entitled to interpret them or not and that seems to me to depend on his own expertise and own reaction to the document, not a question of how the document was prepared.

MR. BREINDEL: I believe it also relates, if he had nothing to do with the preparation of this document, and it was prepared --

THE COURT: If someone came in here and told me how this was prepared and I was satisfied about it, that wouldn't prevent him from testifying about this document, Mr. Breindel. The only missing link here is we don't happen to have in court the witness who prepared this.

MR. BREINDEL: I will accept Mr. Maney's representation that it is an accurate summary.

THE COURT: All right. I will receive it.

Same goes for CS, I take it.

MR. MANEY: I am offering on the same basis CX, cW and CU.

THE COURT: Do you want to state for the record what they are?

MR. MANEY: Yes, your Honor. Exhibit CX is a table, again prepared as a summary of two discrete columns, the first one being a range of interest rates paid by Goldman, Sachs to finance commercial paper inventory on bank loans, the second column being a prevailing selling rate of commercial paper in inventory during the same time period.

THE COURT: Prevailing?

MR. MANEY: Selling rate.

THE COURT: That is what exhibit?

MR. MANEY: CX.

THE COURT: They are both part of CX?

MR. MANEY: Yes, your Honor.

CU, your Honor, is a computer printout reflecting--

THE COURT: That is the same as the one to which you referred yesterday?

MR. MANEY: Yes, your Honor, that is our pride, reflecting every transaction in Penn Central commercial paper from the beginning of sales of Penn Central commercial paper August 1,1968, through June 17, 1970, and it gives information on the discount date, amount, the maturity date, the buying rate, the selling rate, the purchaser, the status at the end of the day as to inventory, repurchase, everything else.

THE COURT: I see.

MR. MANEY: Exhibit CW, your Honor, is a slightly compressed printout, actually this document is a photocopy reduced -- the original is now lodged with another Court -- showing on each of the days starting with January 1969 and going through June 19, 1970, the total amount of Penn Central paper outstanding, the total amount of Penn Central in inventory.

THE COURT: Total outstanding, you mean in the hands of buyers?

MR.MANEY: In the hands of investors or Goldman, Sachs in inventory.

THE COURT: I see.

MR. MANEY: That would be inclusive. So that the outstandings includes inventory which is a separate column.

THE COURT: Okay.

MR. MANEY: Purchases are purchases by Goldman, Sachs,and the column entitled "RTC" --

THE COURT: Just a minute. Purchases, yes, because Goldman,Sachs is the only one who purchased, at least in the later stages of the situation, commercial paper from Penn Central, isn't that right?

THE WITNESS: We were the exclusive dealer.

THE COURT: And since you operated on a principal basis you were really in a sense the only purchaser, right?

THE WITNESS: Yes, from the issue.

MR. MANEY: There is one series of transactions that took place on January 2, 1970, which has reflected a correction of the printout which because the maturities were in excess of 270 days, were handled as an agency private placement to those investors.

THE COURT: All right.

MR. MANEY: The RTC is returns to company. Those are sales by Goldman, Sachs to Penn Central, Prepays are payments by Penn Central prior to maturity. Cols. is collections.

Q I take it, Mr.Van Cleave, that means upon maturity?

A Yes.

MR. MANEY: Sales is self-explanatory, sales by Goldman, Sachs. Buy-backs is a repurchase by Goldman, Sachs from an investor prior to maturity. And the last three columns reflect all commercial paper for which Goldman, Sachs was dealer.

The total amount of paper outstanding. The tot amount of maturities on each day. And the total inventory carried by Goldman, SAchs.

THE COURT: That is actual figures or in thousands or what?

Mr. maney; Those are in thousands, I believe. The last column does not have an "M" but it should have an "M."

THE COURT: I see.

MR. MANEY: All other figures are in thousands. All figures are in thousands.

THE COURT: I am prepared to accept these exhibits unless --

MR. BREINDEL: I have one objection, and that is to CX. If you notice, there is a column, prevailing selling rate.

THE COURT: I don't have CX before me. Give me CX.

MR. BREINDEL: My objection --

THE COURT: Just let me take a look. Prevailing selling rate.

MR. BREINDEL: Yes. I direct your attention to the definition of that on the first page, your Honor. Column 2. There is a definition. Based on that definition, it appears to me that the prevailing selling rate was a judgment factor rather than statistics like we have seen in CW and CX, and I don't know whose judgment was involved. If it was a pure simple statistic I would have no objection, but it appears to me a judgment decision rather than a statistic. On that basis I object to it.

THE COURT: I am going to suggest this. I will admit the other exhibits. You can discuss with Mr. Maney during the lunch hour if you want just what this amounts to here and if you are not satisfied when we come back from lunch we will get a little background from the witness before I rule as to whether that column is okay or not.

So Exhibits CU and CW are admitted in evidence.

(Defendant's Exhibits CU, CW were received in evidence.)

THE COURT: Gentlemen, I have to conclude now. Be back at two o'clock. It is just possible I may be a couple of minutes late. Be here at two o'clock.

(Lunchenn recess.)

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AFTERNOON SESSION
2:15 P.M.

THE COURT: Good afternoon.

GEORGE VAN CLEAVE resumed.

MR. MANEY: Your Honor, during the luncheon recess counsel were able to agree that Exhibit CX may be received in evidence.

THE COURT: Very good. It is received.

(Defendant's Exhibit CX was received in evidence.)

DIRECT EXAMINATION (continued)

BY MR. MANEY:

Q Mr. Van Cleave, this morning you heard my explanation to the Court of Exhibit CW, do you remember that?

A Yes, I do.

Q Do you adopt that explanation?

A Yes, I do.

Q Now, Mr.Van Cleave, you also mentioned this morning something called the top ten in inventory, do you remember that?

A I do.

Q Would you explain why you went through the mentioning of the top ten. Again, I am reminding you that all the questions relate to late 1969, early 1970.

A Yes. Well, as the Court can see, the inventory sheet is made up of five or six pages which makes it very cumbersome for the salesman to go through and obviously if you have large positions in any one name you would want to reduce that so you could make room for proper paper of the same issuer, so rather than read through the entire inventory sheet, we read the top ten by dollar outstandings in the inventory.

THE COURT: Not by age?

THE WITNESS: Not by age.

Q What was the purpose of reading the top ten?

A Well, when a salesman was on the telephne, and I repeat, these are one minute telephone conversations for the most part, if he had an issuer that was interested in, say, H.J. Heinz, for example, as I used earlier, and he could have a ready reference on that sheet to see if Heinz was one of those top, in the --

THE COURT: Do you mean if you had an issuer or an investor?

THE WITNESS: If you had an investor who was interested in Heinz. If Heinz was in a big position on inventory. If Heinz was in the top ten, he could quickly find that.

THE COURT: Wouldn't it be more than that?

Wouldn't you just as a matter of sound business practice, putting aside the special aspects of Penn Central, not want to get too heavily involved with one issuer, want to keep -- to scale down those who were the largest volume?

THE WITNESS: Right. If there was always a large amount of inventory, there was always a reason for that. Plus, as I mentioned a little bit earlier, there is an economic consideration in that it is a negative cost of carry and markup of interest rates was costing us money.

Q Was there any difference in the ease with which a salesman handled a sale from inventory as compared with a special order sale?

A Yes, quite a bit of ease, whereas in a special order sale, as I mentioned earlier, a telephone call was made to the buyer, Goldman, Sachs' buyer from the salesman and the buyer would immediately say "That is good," which could be transmitted immediately to the investor.

In the case of the inventory position, because of the fact that that had to be financed, it was necessary for the control of that inventory to be the note and discount department that I mentioned earlier, and they kept track of all the paper that was in inventory because they had to finance it at the banks or on repurchase agreement.

The salesman would have to call and find out, (a), is it still there, (b), is it out being financed. Has it already been pledged to the bank or on repurchase agreement because all our borrowings on commercial paper are done secured. We put up the actual collateral to borrow the dollars from the banks and the repurchase agreement. If that piece of paper was in the process of being financed at the bank or under a repurchase agreement, we might try to unwind that, but that would take some time.

THE COURT: In other words, the mechanics of the sale of a special order were easier than those of --

THE WITNESS: Ten times, if I may.

Q I believe you said calling special order, the buyer would say "That is good." What does that phrase mean?

A That means that order was confirmed to the salesman.

Q Mr.Van Cleave, did there come a time when a study was made of the profitability of the commercial paper department?

A Yes.

Q When was that?

A That was in late '69.

Q How did that come about?

A Well, Bob Wilson and I had obviously been aware that this cost of carry and markup of paper was causing a reduction in our profits and in fact the elimination of our profits for a year or so. We decided we ought to sit down and do an in depth study to see just what it was costing us, and what we could do about it to change method of operation.

THE COURT: By eliminating profits, do you mean eliminating profits on the items concerned, eliminating profits in the commercial paper department or eliminating profits in the whole company?

THE WITNESS: The commercial paper department.

THE COURT: It was not making money, is that it?

THE WITNESS: Correct.

THE COURT: Was it losing money?

THE WITNESS: Yes, in certain periods. Yes.

Q How was this in depth study performed?

A We took the latest 12 months information that was available to us and that encompassed a period of from September 30, '68 to September 30, '69, and we went through the study to find out exactly what our expenses were, what our costs were and also made projections as to if we cut down our business or if we increased our business or whatever, just what it would mean to us as a department.

Q When were the results obtained?

A We began obtaining results immediately as soon as we started to work on it. We actually put this document together and it was finished some time in March, but we had knowledge of the results in late '69.

THE COURT: Do you mean your knowledge of what the study proved?

THE WITNESS: What it was showing, yes.

THE COURT: No action was taken on the basis of it but you knew what the story was?

THE WITNESS: Right.

Q The results, you say, were reported in March. I show you Plaintiff's Exhibit 75 in evidence.

MR. MANEY: Your Honor, with Mr.Breindel's permission we have substituted a printed copy for the photocopy.

Q Is this document the result of your study?

A Yes.

THE COURT: That was in March of '69?

THE WITNESS: '70.

THE COURT: When would you say that you became substantially acquainted with the findings of the study?

THE WITNESS: By November-December '69.

THE COURT: You and Mr. Wilson?

THE WITNESS: Yes. And others who helped in the study whose names are listed on the cover.

Q Is that document also known as the blue book study or the blue book?

A Yes, it is.

Q Was it your testimony that the commercial paper department lost money during certain periods?

A Yes.

Q How about on an annual basis? Was the department profitable or was there, on an annual basis, losses?

A Yes, on an annual basis there were losses.

Q I call your attention to page 2 of Plaintiff's Exhibit 75, and ask if that refreshes your recollection?

MR. BREINDEL: I object. There has been no foundation that this witness' recollection needs refreshing.

THE COURT: It is in evidence so let's not be technical. He can just tell me what it says or I can read it myself. However we get it, I want to know what the figures were.

THE WITNESS: Yes, it is listed on page 2.

THE COURT: Is it accurately listed?

THE WITNESS: It is correctly listed. That does refresh my recollection as I am thinking of the twelve months of the study; that was not profitable.

THE COURT: I am still not clear as to what period you are asking about, Mr. Maney?

MR. MANEY: On a calendar year basis up through the end of 1969.

Q For any period studied on a calendar year basis, has the commercial paper department lost money?

A That is correct. It refreshes my recollection that they did not lose money. The profits were declining, however.

THE COURT: Would you mind expressing to me what they are.

THE WITNESS: In 1966 they were 624,000.

1967, 1,162,000; 1968, 268,000; 1969,$435,000.

THE COURT: So '68 was the bottom?

THE WITNESS: Yes.

THE COURT: I would like to ask this unless -- I would like to ask it. Over a period of years, let us say five, ten years, has the commercial paper department produced, with the exception of this sharp decline in '68 and '69, generally about the same percentage of the profits of Goldman,Sachs? I am just trying to get a picture of whether the commercial paper department was dependent upon, for example, to produce 10 per cent of the profits, 5 per cent of the profits or whether it was expected that the luck would be according to the draw in the various departments?

THE WITNESS: It really didn't have any assigned profit. It depended upon the money markets.

Are you asking me pre-'66 here or after -- from '70 to date?

THE COURT: Pre-67. '67 seemed to be a pretty sharp increase from the previous time. But perhaps there is no -- perhaps the answer to that is no. Each department does whatever it does.

THE WITNESS: Plus also our spreads, as the business got larger and more competitive, we made double what we made on a trade, you know, in the early sixties as opposed to the late sixties.

Q What conclusions did you reach as a result of that study?

MR. BREINDEL: I object to the form of the question.

THE COURT: I am not quite sure I understand the objection.

MR. BREINDEL: I don't know to whom "you" pertains, Goldman, Sachs, the commercial paper department or Mr. Van Cleave.

THE COURT: Will you clarify who you mean by that?

Q Mr. Van Cleave, what results did you, George Van Cleave, Robert Wilson, Matthew Tolan, Roger Lynch and

Hy Weinberg reach?

THE COURT: Are they the people who made the study?

Q They are the authors of Plaintiff's Exhibit 75.

A We reached the conclusion that we were not operating on the most profitable way we could because of this inventorying of paper that we had done over the years, and it made sense for us to run our business on a special order tap issue basis and having the issuer work with us in establishing swing lines.

Q That is a new term, swing line. What are swing lines?

A Swing lines are lines of credit that are available for borrowing on a day-to-day basis, swing term meaning that you can borrow today and pay it off tomorrow.

THE COURT: Except for the sharply different time period involved, are they roughly the same as bank lines?

THE WITNESS: Yes. With the exception of the access on a day-to-day basis.

THE COURT: Right.

Q There is a phrase in some of the documents, demand lines.

A They are synonymous.

THE COURT: They are the swing lines and the demand lines?

THE WITNESS: They are the same, yes.

THE COURT: But demand doesn't literally mean what it says in law, does it?

THE WITNESS: The bank doesn't demand payment.

THE COURT: Nor can they borrow and, I assume, demand the loan?

THE WITNESS: It is all subject to the usual, yes.

THE COURT: The swing lines, how is it determined how long a period the loan if it is made will be for, is that specified at the time of the loan?

THE WITNESS: No, usually it is left open.

THE COURT: Isn't that the equivalent of a demand loan then?

THE WITNESS: Right. That is why they call it one and the same.

THE COURT: From the lenders' point of view?

THE WITNESS: Yes.

Q Mr. Van Cleave, I show you a copy of Plaintiff's Exhibit 121 in evidence. Were you an author of that memorandum?

A Yes.

Q In relation to your obtaining the results of your in depth study which you testified about, did this memorandum come before or after you had the results?

A Before we had the results.

Q On page 2 of Plaintiff's Exhibit 121, under Alternative 1, it suggests "authorize an increase in our commercial paper inventory ceiling from three to $400 million providing, of course, such positions can be financed." Was that your recommendation as of September 10, 1969?

A Yes.

Q Page 5 --

THE COURT: Excuse me. That was a recommendation, is that right? It says alternatives and, of course, I haven't read them to see, but that was one course of action you could consider?

THE WITNESS: That was Number 1, we recommended that as the first course.

Q It was your recommendation at the end of page 3?

A End of page 3.

Q You were recommending Alternative 1?

A Yes, that is correct.

Q The blue book study, Plaintiff's Exhibit 75, at page 5, states, the beginning of the third full paragraph: "This study has convinced us it is not necessary or desirable to inventory commercial paper."

A That is correct.

Q Was that the result of your study?

MR. BREINDEL: Objection, your Honor. The document is in evidence. The language is fairly clear.

THE COURT: That is right, Mr.Breindel, but I always think those arguments cut both ways. If it is so obvious it is a conclusion, I don't see what harm it does for the witness to tell me what it is.

MR. MANEY: I withdraw the question,your Honor.

THE COURT: Let's see, there was approximately -- well, let me ask you this. On September 10 you recommended Alternative Number 1, which was to increase inventory by what looks to me like a substantial amount?

THE WITNESS: From 250 to 400, yes.

THE COURT: Then in Exhibit 75, which is the actual issued in March of '70, you made the precisely opposite recommendation?

THE WITNESS: That is correct.

THE COURT: When did you and your colleagues receive the latter conclusion?

THE WITNESS: Well, as we got into this study and saw just exactly what the magnitude of these losses were, that is the main thing, but one of the things that was difficult during this period of time for me, and also for

Bob Wilson but particularly me in that I was running the day-to-day position, is that I had to stay within this $250 million ceiling that was proposed by our management, without seeking permission. So there had, I felt -- Bob agreed with me -- there had to be something done in the immediate future to try to alleviate that situation which we thought was to -- let's get them to increase the ceiling. Then as we did the study, we said it is like knocking our head against the wall twice as many times. It doesn't make sense.

THE COURT: It wasn't really that you were blocked by authority, even if you had the authority, it was twice as much a losing proposition?

THE WITNESS: That is right.

THE COURT: When did you reach that conclusion?

THE WITNESS: In about November '69.

THE COURT: Let me see if there was anything else I wanted to ask you here.

Yes. Paragraph 3, at page 5 of Exhibit 75, which was just read by Mr. Maney says this study has convinced us that it is not necessary or desirable to inventory commercial paper. You have just explained why it wasn't desirable, but I gather the word necessary means that in order to carry on your business, you could manage it in some way without inventory?

THE WITNESS: Yes.

THE COURT: When did you reach the conclusion that it wasn't necessary as distinct from desirable?

THE WITNESS: Well, we found this system would, we felt, would work because we had tried it on an experimental basis with certain of our issuers and it was working. That was establishing the swing lines --

THE COURT: Am I correct, then, the facts that inventoring wasn't necessary, by which I mean a prerequisite to your being able to carry on the commercial paper business, that conclusion you had never seriously had any doubt, it was only a question of whether it was a good thing or not a good thing to do?

THE WITNESS: Right. We had been operating under this same way of doing business for many years and many of the people involved and the partners felt that that was the way to operate.

Q Would it make any difference to an issuer which way the paper was handled?

A Yes. It certainly could, particularly in this time frame.

Q In what way?

A Well, because during this period of time if the unsold portion of paper was put into our inventory, we would really have to finance it and we were taking a loss on that. If the prime rate was higher than the rate at which we were buying the paper, they were that much ahead of the game.

THE COURT: Sure.

Q What did you do to implement this change of --

A We started on a case by case basis in making the rounds to our issuing copanies to convince them that this was the best way to do business and to give it a try.

MR. BREINDEL: Your Honor, I object to that testimony unless it is established that it was started after March 13.

Q When was that started, when did you start --

A In late '69. Early '70.

Q Which issuers did you work on, I think is the phrase?

A We worked on those that would be the larger positions in our inventory.

Q The top 10?

A Yes, right.

Q Incidentally, did you at my request review the top ten lists for January 1970?

A Yes, I did.

Q Was Penn Central on that list?

A Yes.

Q How often?

A Just about every day.

Q Was it Number 1 on the list at any time?

A Yes, about half of the time.

Q Do you recall whether Penn Central was one of the issuers that you worked on?

A Very hard, yes.

THE COURT: What on earth did you tell your customers about the advantages to them of your new proposal?

THE WITNESS: Well, what we did was to say to them, we were very candid with them. We told them what was happening to us and we wanted to try this on an experimental basis and to try these swing line arrangements for a few days because also what had been occurring during this period, it is just human nature if you know you are going to take a piece of paper into inventory and you are going to take a loss on it, you tend to do whatever you can to get it sold, and that might result in your selling at a price which could be disadvantageous to them.

But we also in making the solicitation said, look, if we are wrong and, you know, you have to be in the banks all the time and we are not taking care of you, we are obviously not going to operate that way.

Q Did the practice of trying to adjust the rate to sell the paper have a name?

A Yes, it did. We called it distress selling.

Q Did that have any credit significance?

A None whatsoever.

Q You mentioned an inventory ceiling. Did you operate under an inventory ceiling in late 1969?

A Yes, I did.

Q What was that ceiling?

A 250 million.

Q That was total inventory for Goldman, Sachs?

A Total commercial paper inventory.

Q Who imposed that ceiling?

A Management committee.

Q Was it an unvarying ceiling or could you exceed it?

A No. I would seek permission to exceed it and I would be granted that permission from time to time.

Q From whom would you seek the permission?

A George Doty was my first contact.

Q What was a backup line?

A A backup line is a line of credit which is used for the backing up of commercial paper, which means that the commercial paper can't be sold, that the lines of credit would be used to cover the maturing paper.

Q Is it collateral for the repayment of the notes?

A No. It has nothing to do with the repayment of the notes. It is strictly a type of line that is set up for the marketing just in case for some reason if there was any disaster, let's say in the economy or somebody dropped a bomb somewhere, notes couldn't be sold, that these lines would be available to pick up the commercial paper maturities. However, these lines, just like the swing and demand are all subject to the financial affairs of the company being in order.

MR. BREINDEL: I move to strike the witness' last answer.

THE COURT: If that is his explanation I don't see how you can strike it.

MR. BREINDEL: I don't believe he was asked about whether or not it was available. It was dependent upon his company's financial condition.

THE COURT: He was asked what such a backup line is and I gather he testified that the affairs of the company being in order are part of the conditions.

Overruled.

Q Mr.Van Cleave, before you started talking to issuers about going to swing lines, tap issue, special order, did you try anything else to get your inventory down?

A Yes. We also would return the notes to the companies from time to time because of the fact that the notes had a set maturity. What we did was try and experiment, we would give them back, say, four or five million of this preset maturity and then offer for sale the same amount of paper that same day so we could offer any maturity for sale.

THE COURT: I don't understand that. Give me an example.

THE WITNESS: We have five million -- I might as well use the name I have been using all along. Five million H.J. Heinz in inventory with maturity of 33 days, and each day, of course, that maturity gets one day less and it is there. We might have a special order for $5 million worth of Heinz for 43 days, but we wouldn't be able to do that because that particular maturity is fixed so in order to combat that, what we would do is say we will return that $5 million to you so that we can do the other $5 million worth of paper for 43 days.

THE COURT: The result really is that the company or the issuer both receives the proceeds later than it expected or hoped to and extends the maturity date for 30 days beyond or ten days or whatever?

THE WITNESS: It nets out as far as the face amount of dollars that he would get, but in a rising interest rate market it would be very advantageous to get another three days or so at the same rate.

Q Did you ever return paper to a company without matching it with availability of special order?

A Yes, we have.

Q On more than one occasion?

A Yes.

Q Did you do so in the case of the Penn Central?

A We did.

Q Do you remember when?

A Yes, I do. In December of 1969 when the company-- when Pennco did come --

Q P-e-n-n-c-o?

A Yes.

THE COURT: This is when, September '69?

THE WITNESS: December.

THE COURT: 12, the twelfth month?

THE WITNESS: Yes.

THE COURT: Pennco, is that the parent company or which company is that?

THE WITNESS: That was a subsidiary company.

Q A Pennsylvania company?

A Yes.

THE COURT: That is 100 per cent owned by Penn Central Transportation Company?

THE WITNESS: Right. They did some financing and we returned approximately $16 million worth of paper during that -- when they received the proceeds, which we did not resell.

THE COURT: Would you describe that agency more. First of all $16 million, that was commercial paper of Pennco?

THE WITNESS: No, it was commercial paper of Penn Central Company -- Transportation Company. The maker of the note in this suit.

Q Is that reflected in Exhibit CW in evidence?

THE COURT: Which exhibit?

MR. MANEY: CW, your Honor. In December 1969.

THE COURT: I have got CW.

THE WITNESS: Page 23, your Honor.

THE COURT: Can you tell me where?

THE WITNESS: On Christmas Eve, December 24, '69, there is an RTC up above. RTC meaning return to company.

THE COURT: Yes, 16.170. You say that was commercial paper of Penn Central Transportaiton Company and I assume you returned it to them, is that right?

THE WITNESS: That is correct.

THE COURT: How does that relate to the financing of Pennco, which was Penn Central Transportation Company, a subsidiary?

THE WITNESS: They loaned the money to the parent company.

THE COURT: Letting them buy back their paper?

THE WITNESS: They upstreamed the money to the parent company who then retired the paper.

THE COURT: So you mentioned Pennco's financing only because incidentally it furnished the source of the funds which enabled you to return it?

THE WITNESS: That's right.

Q And that return reduced your inventory of Penn Central as reflected in CW from $16,320,000 to $50,000 --

A 50,000, yes.

THE COURT: You were down to $50,000 at that time?

THE WITNESS: After the return, yes.

THE COURT: Which for all intents and purposes is nothing, right?

THE WITNESS: Correct.

Q Was that return to company successful in keeping the inventory down?

A Well, we picked up shortly after that and stayed fairly steady in the two, three, four, five million dollar range all the way through the first few days of 1970, but then at that time the company requested that we give them back or increase the outstandings by the amount of that paper that we had returned.

When we started that program that resulted in the larger inventories again.

Q What was the total amount of borrowing that Penn Central could do short term during this period?

A Two hundred million.

Q Pursuant to ICC authorization?

A Correct.

THE COURT: May I ask this. When Penn Central in January, whenever it was, asked you in effect to reverse in whole or in part your return to them -- am I correct, that is what you said?

THE WITNESS: That is right.

THE COURT: What action did Goldman, Sachs take in response?

THE WITNESS: We said that we would go to work and try to get that paper resold again and go back on the basis of how we had operated in the past, and that was to sell everything they asked us to and if we did not, we were taking the unsold portion into our inventory position.

THE COURT: So you would either sell or take yourselves whatever they offered?

THE WITNESS: Correct.

THE COURT: How high -- I have seen the figures or at least they have been mentioned in the briefs but I don't remember. How high did your inventory get thereafter?

THE WITNESS: It got up to let's say 18 million in January. I think that was -- that is about the high, 18 to 20, if my memory serves me right.

Q Were there other occasions on which you returned paper to Penn Central?

A Yes. On page -- of this same exhibit, if I may, at page 26 you will see a return to company of $10 million.

Q That was on February 9?

A February 9,1970, yes. And this was a case of we were trying to get these people to follow our advice. We were having a lot of trouble. They were tough negotiators.

THE COURT: What advice are you referring to?

MR. BREINDEL: Excuse me, your Honor, I can't hear Mr.Van Cleave.

THE COURT: Read that back, Mr. Reporter.

(Record read.)

THE COURT: May I ask a question about your last statement. First of all, who gave them the advice?

THE WITNESS: Both Bob Wilson and I.

THE COURT: What was the advice?

THE WITNESS: The advice was to follow our suggestion of establishing swing lines and allowing us to sell against order and let them use those swing lines instead of our financing, doing the financing for them.

THE COURT: Did they state why they didn't do so?

THE WITNESS: It was expensive.

THE COURT: Somebody had to take the rap on it, either you or the banks?

THE WITNESS: Or them. Better us than themselves. So on February 9, they had finally condescended to use some swing lines that they had and relieve us of the ten million dollars.

THE COURT: Are you going to go into that, Mr. Maney, because I would like the details of that condescending.

Q Did you also impose a ceiling or guideline on the amount of inventory you would carry of any one issuer?

A Yes.

Q Did you do so in the case of Penn Central?

A Yes.

Q Did you do so inthe case of any other company?

A Yes.

Q I show you Exhibit BM for identification.

THE COURT: Did you establish a maximum for every issuer separately or did you do it by classes or was it one maximum for everybody or what?

THE WITNESS: Well, we have one exhibit which will answer that. It is going in now, that will answer that.

THE COURT: I should learn to wait.

Q Mr.Van Cleave, could you explain what Exhibit BM for identification is?

A Yes, this is a memo to establish internal guidelines on the inventory of certain of our commercial paper issuers, in this case finance companies.

Q Were you an addressee of that memorandum?

A I was.

Q Why finance companies?

MR. BREINDEL: I object to the question, your Honor.

THE COURT: Can you give us an answer? Do you know the answer?

THE WITNESS: Yes, I do.

THE COURT: All right.

A Because finance companies were a natural for a ceiling because they were in the market as I mentioned before, constantly. They were always in the market and therefore we were helping to finance their position.

THE COURT: They were the friskiest horses in the corral and you wanted to put the muzzle on them first?

THE WITNESS: Not risky --

THE COURT: I said frisky.

THE WITNESS: Absolutely.

THE COURT: I mean active.

THE WITNESS: They were in all the time and they were actually more familiar with this type of operation than some of the industrial companies were. We knew back as early as 1969 to the extent we could get some of these people to do their own financing, it would be to our advantage. So we started off with the finance companies to see how that would work.

MR.MANEY: I offer Exhibit BM in evidence.

MR. BREINDEL: Mr. Van Cleave, did you receive BM on or about September 1, 1969?

THE WITNESS: Yes, I did.

MR. BREINDEL: No objection.

THE COURT: Received.

xx (Defendant's Exhibit BM was received in evidence.)

Q Mr.Van Cleave, were there any frisky industrial issuers?

A Yes, there were.

Q Can you name one?

A Penn Central was one.

Q Were there others?

A Yes. There were three or four other companies that we were experiencing the same problem in that we always had large positions in inventory and we were doing everything we possibly could to get them to establish swing lines. So we did then establish internal guidelines as far as their inventory positions were concerned.

Q Did you adhere to the guidelines reflected in Exhibit BM?

A Yes. Pretty much so, but from time to time it would be necessary to go over the amount.

Q Did you adhere to the ceiling on Penn Central inventory?

A The answer is the same. I tried to keep within the five million, but from time to time I had to go over that.

THE COURT: In the case of Penn Central, I don't know how relevant any particular item of information we are talking about is, but just to be sure I understand the facts, if the guideline was five million -- what is the date of this, December 1, 1969, that is the date of the financing -- when did you establish guidelines of five million for Penn Central?

THE WITNESS: That was in February of 1970

THE COURT: It was before then that you were up to 18 million, is that right?

THE WITNESS: That's right.

THE COURT: How high did you go after establishing the five million? What was the highest you went to after you established the five million guideline?

THE WITNESS: Nine million.

Q Incidentally, was this effort to reduce inventory successful?

A Yes. Very much so.

Q What was your inventory, total inventory -- I will withdraw that. It is in evidence.

What was your inventory yesterday, Mr. Van Cleave?

A Twenty million.

Q Is that total?

A That is all paper, yes.

THE COURT: When was that, did you say?

THE WITNESS: Yesterday.

Q I believe you testified you did discuss --

THE COURT: In that regard if the figure has some meaning, I would like to ask you what the relative volume of your commercial paper business during the last year has been compared with the year --

THE WITNESS: Our outstandings are almost double what they were then.

Q Did you have a meeting with representatives of Penn Central in 1969 to discuss this question of inventory?

A Yes.

Q When did that take place?

A December 9. I believe that is the date.

Q Did you prepare a memorandum on that occasion?

A I did.

Q Where was that memorandum filed?

A The credit file.

Q I show you Exhibit A for identification and ask if you can locate that memorandum?

MR. BREINDEL: Your Honor, I am going to object. This memorandum is a plaintiff's exhibit and we can hand it up. There is no need to go through the credit file, what has been identified as the credit file.

THE COURT: I don't care how anybody finds it as long as it is found. If it is in evidence already, great. Mr. Maney was just asking Mr. Van Cleave to help him out.

Do you know where it is in the file?

MR. MANEY: Your Honor, we have prepared -- I can represent that I do not believe Mr. Breindel is going to be objecting to a few of the other so-called blue sheets being offered in evidence as to completeness and perhaps it would be of some facility to the Court to hand up to the Court, purely as an aid a collection of just the blue sheets, many of which are already in evidence --

THE COURT: What is the particular theme of this collection?

MR. MANEY: These are the blue sheets on Penn Central arranged chronologically from the credit file. There will be this witness --

THE COURT: You represent them to be all of the blue sheets?

MR. MANEY: All of the blue sheets for the period covered.

MR. BREINDEL: I am not sure what the purpose of this is.

THE COURT: It is just to make it easier to look at them, is that right, Mr. Maney.

MR.MANEY: I hope it is going to be easier for the Court and the witness to work with the material.

All of the blue sheets that are in evidence as Plaintiff's exhibits are in here. There are some defendant exhibits that are not yet in evidence. I don't anticipate there will be a problem in completing that balance. They are chronologically all of the blue sheets during that period.

THE COURT: Just to clear it up, why don't you tell us which ones are defendant's exhibits so if there are any objections, I can rule on them.

MR. MANEY: They are all marked either PX, which would be a plaintiff's exhibit or they are all -- all the defendant's exhibits are designated "A" with a numerical subdesignation. Many of them have both numbers.

THE COURT: Do you want to take a couple of minutes to look through and see if you want to object to any of the A exhibits. I am sure there won't be any quibble on this. If there is, I won't pay any attention to it about who offered what as long as the material is in evidence.

I don't regard an exhibit as being partial to one person or another. If it is in evidence it is in evidence. If it is for you it is for you. If it is against you it is against you.

(Pause.)

BY MR. MANEY:

Q Mr.Van Cleave, focus, please, on Exhibit A in its entirety.

THE COURT: Exhibit A?

MR. MANEY: Exhibit A.

THE COURT: That is the whole --

Q That is the Penn Central credit file?

A Yes.

Q What is contained in that binder?

A Everything that is contained -- you are asking --

Q In general categories.

THE COURT: Just to clear the record, when you say it is the Penn Central credit file, that means, it is the file kept by Goldman, Sachs as to the credit of Penn Central, right?

THE WITNESS: That is correct.

THE COURT: These are not Penn Central documents, they are Goldman, Sachs documents. They are documents from your files, not their files?

THE WITNESS: That is right.

This file contains financial information obtained from the company. Copies of financial information that we prepared. Blue sheets which, as I have testified to earlier, are call memorandums. Also newspaper articles. Reports from agents, the credit agents. Announcements that are in the press, clippings, prospectuses of the bond deal. Any sort of that type of information that pertains to an issuer.

MR. MANEY: Your Honor, I offer Exhibit A in evidence.

MR. BREINDEL: I object, your Honor. There are numerous exhibits in there. I have no objection if it is offered as the credit file as such with a limiting instruction that any document in there that is not otherwise admitted in evidence is just admissible to show that this was in the credit file.

With that reservation I have no objection.

THE COURT: In other words,you object to it if it is offered to prove the truth of its contents as to any particular item?

MR. BREINDEL: Yes.

THE COURT: I don't understand Mr. Maney at the moment to be offering it for that purpose.

MR. MANEY: I am offering it as to the source from which Goldman, Sachs representatives obtained information --

THE COURT: I assume you do contend that the users of the credit file believed its contents to be true and you can ask this witness if it is necessary to do that to establish that, but that is a different thing, of course. I don't know why Mr. Breindel is concerned. With that reservation it is accepted in evidence.

MR. MANEY: On that basis, your Honor, I will represent the list of blue sheets which we handed to the Court purely as an aid are now all evidence.

x (Defendant's Exhibit A was received in evidence.)

MR. BREINDEL: They are all in evidence because they are all in the credit file?

THE COURT: Yes.

MR. MANEY: For the record, this photocopy of the credit file, Exhibit A, is up to March 13, 1970.

THE COURT: I don't know if it makes any difference. What is the earliest date?

MR. MANEY: Your Honor, the documents that are in there go back to New York Central and Pennsylvania Railroad.

THE COURT: Before the merger?

MR. MANEY: Yes, your Honor.

MR. BRENNAN: Your Honor, may I ask Mr. Maney if all the documents in Exhibit A are designated in the defendant's pretrial order?

THE COURT: There are an awful lot that are designated. Are they?

MR. MANEY: Your Honor, the pretrial order lists as Exhibit A with numerical subdivisions of each piece of paper in the credit file. The Exhibit A which was received in evidence does not include any document which is dated after March 13, and identified in the pretrial order as a subdivision of Exhibit A.

THE COURT: Thank you. I don't need it at the moment, do I?

MR. MANEY: No, your Honor.

Q What was the date of that meeting?

A December 9, 1969.

THE COURT: Is there a blue sheet related to it?

THE WITNESS: Yes. 22, your Honor.

THE COURT: Plaintiff's Exhibit 22? These are in chronological order, aren't they?

THE WITNESS: Yes. They are by the dates.

THE COURT: I see it. Thank you.

Q Do you recall anything that transpired at that meeting other than is reported in this memorandum identified as Plaintiff's Exhibit 22?

A No, I don't.

THE COURT: You prepared this, did you?

THE WITNESS: I did.

THE COURT: As you recall, it is an accurate description of what occurred?

THE WITNESS: Yes.

THE COURT: Let me get the personnel straight. It indicates, does it, that Loder and Verlander and Lepley are the ones who came to Goldman, Sachs, is that right?

THE WITNESS: That is right.

THE COURT: They were all officers of one satus or another of Penn Central?

THE WITNESS: Right.

THE COURT: They came as a result of an arrangement with Mr. Drypolcher?

THE WITNESS: No. The original, if you look in the next sentence, the original meeting was scheduled when O'Herron and Wilson --

THE COURT: O'Herron was the financial V.P. of Penn Central?

THE WITNESS: Right.

THE COURT: Wilson was your boss?

THE WITNESS: Right. And Mr. Sachs, who was one of the founders of our firm passed away and there was a funeral. Bob went to that funeral. So O'Herron withdrew. The meeting wound up between myself, Vogel and Drypolcher and those people mentioned from the railroad.

Q Mr.Van Cleave, there is a reference in there to a remark by Mr. Vogel, towards the bottom of the sheet. Picking up the middle of that sentence, pointing out that there are now investors that will not buy CP -- that is commercial paper?

A Yes.

Q Unless there is 100 per cent coverage. Do you have any recollection of that part of the conversation?

A I do.

Q What do you recall about that?

A Well, during the -- which is not unusual during tight money periods, which was certainly the case in December 1969, investors would be concerned with some companies as far as 100 per cent coverage is concerned because they are worried about whether or not they are able to raise those dollars. If they can't sell their paper, what do they do. We are not telling the officers of the railroad we felt this was the case. It was a possibility and something we were alerting them to.

THE COURT: You said you weren't telling them tha was the case. Do you mean that it would be necessary for them to do it as a practical condition of selling their commercial paper?

THE WITNESS: We were not telling them that at that point. It was really just putting them on notice that some investors were looking for that.

Q Do you recall why you felt that was not necessary in the case of Penn Central?

MR. BREINDEL: Objection, your Honor.

THE COURT: Sustained as to -- well, I will allow it. I don't like the way you are putting it, "why", but --

MR. BREINDEL: Mr. Vogel made the statement, not Mr. Van Cleave. Unless he is going to testify as to why Mr. Vogel made the statement, I object to that also.

THE COURT: I gather Mr. Maney was not asking what Mr. Van Cleave had to say about the question of whether there were some people who required 100 per cent coverage, but was asking what the reasons were for his conclusion, that is, Mr. Van Cleave's conclusion, that it wasn't necessary for Penn Central to have 100 per cent coverage at that time, is that correct?

MR. MANEY: That is correct.

MR. BREINDEL: My objection to that, your Honor, is that Mr. Van Cleave did not tell this to Penn Central. Mr. Vogel did, so whatever was in Mr. Van Cleave's mind --

THE COURT: Let's explore that.

Did you express your views on the subject at the meeting?

THE WITNESS: I don't remember if I did, whether I did or I didn't, but I know I supported that view.

THE COURT: Which view?

THE WITNESS: The view that it was not necessary at this time.

THE COURT: Well, I will allow you to express what your views were at the time.

What were your views at the time?

THE WITNESS: My view was that it might come to the point some time where 100 per cent coverage was necessary, but at that particular time I didn't think it was necessary because we were still being able to market the paper fairly well and also we knew -- no, strike that.

THE COURT: In other words, are you telling me that you had concluded that the market was still buying Penn Central paper without that?

THE WITNESS: Yes.

THE COURT: Had you had any discussions with any purchasers of Penn Central paper about their feelings about the line coverage for Penn Central within a month or six weeks prior to this meeting that you recall?

THE WITNESS: Not me personally, no.

THE COURT: What was the source of your information for the conclusion that you did reach?

THE WITNESS: Well, this was, as I mentioned before, in our day-to-day, the way we operate -- it is feedback from the sales force really is where I get all my input.

THE COURT: In your daily conference calls and so on?

THE WITNESS: Right. The salesmen would mention here and there that my account is not going to buy any more paper unless it is 100 per cent covered. Not specifically referring to Penn Central or anyone else. He would just -- the investor just made a policy decision that he would no longer buy paper unless it was 100 per cent covered. That was happening in a few cases, but not to the point where I felt that it was an alarming situation and that they better run out and do it now, but it might not be a bad idea to let them know what was taking place at that time.

Q Did the question of line coverage have any credit significance to you?

A No.

THE COURT: Do you want to explain that a little bit further? What do you mean by "credit significance"? Do you mean it had nothing to do with the ability of the company to pay back its debts by the maturity date?

THE WITNESS: Right. It had nothing to do with whether the notes could be paid or not.

THE COURT: It had more to do with whether they would be able to sell the paper?

THE WITNESS: Right. A marketing function.

Q Would you identify who Mr. Lepley was?

A Mr. Lepley was the day-to-day man on the Penn Central account, worked for Penn Central. He was the one that dealt with the buyers, with the Goldman, Sachs buyers. He had recently been hired from Atlantic Richfield, so he came in to introduce himself.

Q What is meant by the sentence towards the bottom of your memorandum,"it was agreed that in order to spread out maturities that we would go up one-eighth per cent for 90, 270 day paper"?

A Because of the fact that they really didn't want to increase their bank lines, (a). (b), they didn't want to get any swing lines. What else does one do to try to create liquidity or be sure the paper gets sold, you stress longer maturities. So we suggested it is expensive to pay compensating balances. It is expensive to borrow from the banks. Wouldn't it make sense to add an eighth or so premium on the paper to reach for these longer maturities.

Q Did the Penn Central representatives express their reaction on the swing line suggestion?

MR. BREINDEL: Objection, your Honor. The witness stated everything he remembers is set forth in Plaintiff's Exhibit 22.

THE COURT: Well, you can point that out to me, but if he remembers something else now, I am not going to hold him to a rigid statement that everything is in here -- I think he did state it was an accurate description of what took place and in substance it covered the meeting. Even under such circumstances, I have been at meetings where I took notes where I might leave something out which later I might remember occurred.

MR. BREINDEL: I want to make my objection clear, your Honor. About five, ten minutes ago this witness testified he did not remember anything about the meeting other than what is set forth in this document.

THE COURT: I think that is a pertinent observation with regard to credibility. He may now say, I do now remember something else. I will hear what it is.

THE WITNESS: Will you repeat the question, please.

Q Whether there was any reaction by the Penn Central officers on the suggestion about swing lines.

MR. BREINDEL: I object to the form of the question insofar as he is seeking a reaction.

THE COURT: Did you talk -- was there discussion about the subject of swing lines with Penn Central?

THE WITNESS: Yes.

THE COURT: What do you recall being said by the Goldman, Sachs people and what do you recall being said by the Penn Central people?

THE WITNESS: I recall I suggested that they set up the swing lines, which totally was up to O'Herron. These were not the decision makers.

THE COURT: He wasn't there?

THE WITNESS: He wasn't there. So anything I recommended to be taken back to him and anything that they said -- they didn't really say that much until they checked with him, but their reaction was, maybe what we should do is convert 15 million in the existing lines into swing lines, and I said maybe the thing to do is maybe get 15 million in additional lines and make those swing lines. That is what I recall about the discussion on swing lines.

THE COURT: Is that mentioned in your memo here at all?

THE WITNESS: Yes.

THE COURT: Where?

THE WITNESS: About two-thirds of the way down in the middle of the page it says Bob Loder said they could possibly convert --

THE COURT: Fifteen million of the 50?

THE WITNESS: Right. The next sentence I suggested that they leave it as is and get the additional.

THE COURT: Right.

Q Did you thereafter have another conversation with Penn Central concerning inventory?

A Yes.

THE COURT: Concerning what?

MR. MANEY: Inventory.

Q When did that take place?

A In March of 1970.

THE COURT: Was that the next discussion or were there others in between if you know?

THE WITNESS: We would have kind of a day-to-day type of thing where we would be keeping them up to date as to what we had and gee, wouldn't it be nice if we had less.

THE COURT: No formal meeting until March?

THE WITNESS: That is correct.

MR. BREINDEL: Your Honor, I object to the witness, when being asked the question, looking through that folder unless he is specifically directed to.

THE COURT: Do you mean you prefer him to testify first without looking at the memorandum?

MR. BREINDEL: I believe his recollection should be tested first. If he has none, then I have no objection. I object to his thumbing through documents before answering a question.

THE COURT: Would you mind not looking at the documents unless it be suggested to you.

THE WITNESS: Certainly.

THE COURT: Is this March 5, 1970 you are speaking of, which is the last exhibit here, Mr.Van Cleave?

THE WITNESS: Yes.

THE COURT: Why don't you tell us what you remember of that meeting and then if you can't remember -- if you need to refresh your recollection, you can look at the memorandum. We would like to know what your memory is independently first.

A Sometimes I have difficulty with this case because I have read all this stuff so many times I can't remember what I read and what I remember from the meeting. It makes it difficult for me, but I will try.

Q Was it a meeting?

A It was a telephone call,yes. Yes, there was some question as to what this internal guideline was that we had in Penn Central inventory.

THE COURT: Could you start by telling me who told who and who else was on the phone, if anybody else was? Was this a call that you had?

THE WITNESS: I called Ray Lepley.

THE COURT: He was the contact man?

THE WITNESS: He was the day-to-day man. There had been an understanding between -- the words I got from Wilson was that the company would use ten million of their swing lines; when those swing lines were filled, we would be willing to take up to five million dollars of commercial paper for our inventory. The word had gotten back through Lepley to Lynch, who was one of the buyers, to me that no, that really wasn't the way it was going to work. Goldman, Sachs was going to take in five, but maybe it was ten million dollars worth of paper and then at that time they would use the swing line, so I was trying to clarify which way that this was going to be.

THE COURT: Did you call him as far as you remember?

THE WITNESS: Yes, as far as I remember.

THE COURT: Okay.

THE WITNESS: And he said that he would check it out and get back to me and O'Herron didn't recall anything about this five million dollar figure, and he thought it was more like then and that he wouldn't really agree to any kind of number unless it was in writing.

THE COURT: Okay.

Q Do you remember anything else of that conversation?

A No, I don't.

Q I believe you said you had daily contacts with the railroad between December and March. Do you recall the submect matter of any of these conversations, these daily contacts?

A If I said I had daily contact, that was incorrect. What I thought I said was that we had daily contacts. Meaning the buyers. In which cases we would be talking about this inventory.

Q What was being talked about?

A Lepley would ask Lynch, how much do you have, five million. Wouldn't it be nice if you took half of that.

THE COURT: Were you in on any of those discussions?

THE WITNESS: Very few.

THE COURT: I really don't think that will be helpful.

Q Did you, up to March 13, advise Penn Central that you would not inventory Penn Central's paper?

A No.

THE COURT: By "you," do you mean Goldman, Sachs?

Q Goldman, Sachs?

A Yes, I do mean that.

THE COURT: What was the inventory at March 13? I forget.

THE WITNESS: $4,700,000.

MR. MANEY: No further questions.

THE COURT: I think this would be a good time for us to take a short recess.

(Recess.)

CROSS-EXAMINATION

BY MR. BREINDEL:

Q Mr. Van Cleave, again would you give us your educational background?

A I went to George Williams College for one year in Chicago. I went to work on La Salle Street, which is equivalent to Wall Street in New York, at cashiers area. Into the Service for four years. Back to the brokerage business and then attended North Western University in the evenings for about two years.

THE COURT: How old are you?

THE WITNESS: Forty-four.

Q While you attended college, did you ever take any courses in finance?

A Yes.

A Yes.

Q Do you recall what those courses were?

A Accounting. Corporate finance was, I believe, the name of the course which covered various aspects of the financial field.

Q Did you ever take any courses in banking?

A No.

Q In connection with the litigation involved in Goldman, Sachs' sale of Penn Central paper, you have testified on a number of occasions, is that right?

A Yes.

Q And can you tell us on how many occasions you have testified?

THE COURT: You mean in the trial as distinct from deposition, for example, or different cases -- why don't we take the number of cases?

Q How many cases have you testified in to date?

A Two, plus this one.

Q Did you also give testimony at a deposition in this case or in the consolidated cases?

A Yes.

Q Did you also testify before the SEC?

A No.

Q Now, in connection with your testifying here today, Mr. Van Cleave, did you review any documents in connection with your testimony?

A May I back up a bit. I think I missed a case. It was three plus this one.

THE COURT: Okay.

Q I assume of those three, one was Franklin and one was Welch, is that correct?

A That's correct.

Q What was the third one?

A First National Bank of St. Louis.

THE COURT: Is that a case that was tried?

THE WITNESS: Yes.

Q When did you testify in that case?

A Within a month. About a month ago.

Q In connection with your testifying today, Mr. Van Cleave, in preparing for your testimony today, did you review any documents?

A No.

THE COURT: Were you afraid you would get them mixed up?

THE WITNESS: I have been through it a couple of times in the last few months. I said to counsel I almost feel like a Broadway actor.

THE COURT: I gather you prefer to go off the boards than go on?

THE WITNESS: Yes, your Honor. I wish I would get canceled.

Q What were your duties with Goldman, Sachs during the period from 1969 through the first quarter of 1970?

A My duties,as I testified before, were running the day-to-day marketing operations of the commercial paper department.

Q And for how long a period of time did you have those same duties?

A When I was transferred to New York in August of 1968.

Q During this period of time to whom did you report?

A Robert Wilson.

Q And Mr. Wilson was your superior?

A Yes.

Q Would you tell us what position Mr. Wilson held during this period of time?

A A general partner of the firm and the partner in charge of the commercial paper department.

Q Did you report to anyone else during this period?

A No.

Q Who reported to you during this period?

A On that organization chart that I showed earlier, the buying -- essentially the buying and the selling.

Q Are you referring to Defendant's Exhibit BN as the organizational chart?

A Page 2 of BN, yes.

Q Does this chart, Defendant's Exhibit BN, page 2, accurately reflect those persons who reported to you?

A To my knowledge, yes.

Q When was this chart prepared, Mr.Van Cleave?

A The date in the right-hand column says July 22, 1971.

Q To the best of your knowledge does this accurately reflect the Goldman, Sachs' commercial paper department organization in March of 1970?

A To my knowledge, yes.

THE COURT: When you say "to my knowledge," I assume you mean to the best of your knowledge?

THE WITNESS: Yes.

THE COURT: You don't have any reason to doubt it, do you?

THE WITNESS: I don't. I was just trying to conn myself in case someone forgot a name.

THE COURT: Right.

Q Mr.Van Cleave, in March of 1970, did the commercial paper department have a new business liaison division?

THE COURT: In March of '70?

MR. BREINDEL: Yes.

THE COURT: What part of March?

MR. BREINDEL: Any part of March.

MR. MANEY: I object to the question to the extent it goes beyond March 13 --

THE COURT: Let's hear the answer first.

A The answer is yes.

THE COURT: That was what, a new what?

MR. BREINDEL: New business liaison.

THE COURT: That was of the commercial paper department?

THE WITNESS: Yes.

THE COURT: When was that instituted?

THE WITNESS: We have always had a liaison.

THE COURT: I thought you said was it originated. You just mean did it exist, is that right?

MR. BREINDEL: Yes.

Q That is not reflected on Defendant's Exhibit BN, is that correct?

A No, it is not.

THE COURT: There is something about new

business. Mr. Whitehead was that? I can't read this very well.

THE WITNESS: That is on page 1.

THE COURT: Didn't you testify on direct about the relationship Mr. Whitehead had to your department?

THE WITNESS: That is correct.

THE COURT: Is this new business liaison something different?

THE WITNESS: Yes. In other words, they went out and did the solicitation for paper issuers. We had to have someone within the department to work with them and that person was the liaison.

THE COURT: What was his name?

THE WITNESS: At this particular time it was Lou Drypolcher. It was quite common that either myself or one of the buyers or someone would act in that capacity.

THE COURT: Was a single person assigned to that position from time to time?

THE WITNESS: Yes.

THE COURT: Mr. Breindel, if you are asking about a certain period of time, I think you ought to specify what period you are talking about so we can also refer to the person who filled that job.

Q During the period from January 1 through March 13, 1970, there was somebody in the commercial paper department whose duties were denominated as new business liaison, is that correct?

A Yes.

Q Who was that gentleman?

A I am not sure about the entire time frame, but during that time period Lou Drypolcher was in that department.

Q Does the name John Laylor mean anything to you?

A No.

May I? The name of Jack Saylor. Jack Saylor was in that capacity also for some portion of that time.

THE COURT: Is that S-a-y-l-o-r?

THE WITNESS: Yes.

Q What was the function of the new business liaison person?

A That was to keep -- that person would keep the commercial -- the new businessman who was out trying to solicit the new issuer informed of what was going on in the market because the new businessman can't possibly keep track of all the services that Goldman, Sachs has to sell and be current unless he is kept posted and also there is a lot of mechanical things involved when one enters the commercial paper market, and he would help the new businessman structure that.

THE COURT: Just for the record, when you use the phrase "the new businessman," you mean the man at Goldman, Sachs who was responsible for the process of trying to secure new business, is that correct?

THE WITNESS: Yes.

THE COURT: You don't mean somebody from the outside who happened recently to go into business?

THE WITNESS: No, I do not.

Q During the period covered by Defendant's Exhibit BN, which is January 1, 1970, through June 30, 1970, there always was a new business liaison man?

A That's right.

Q Can you tell me for what purpose Defendant's Exhibit BN was prepared?

THE COURT: That is the organization chart?

MR. BREINDEL: Yes. I am referring to page 2 now.

A I do not.

Q Did you review it at or about the time it was prepared?

A Again, I have seen the document so many times I can't tell you whether I saw it then or I have just seen it a number of times since then.

Q Mr.Van Cleave, in March 1970 didn't the commercial paper department have a very similar organizational chart?

THE COURT: Similar to the one --

Q Similar to Defendant's Exhibit BN?

A Yes.

Q I direct your attention, Mr. Van Cleave, to page 89 of Plaintiff's Exhibit 75, and I ask you if that is an accurate copy of Goldman, Sachs' commercial paper department organization in March of 1970?

THE COURT: Page 89?

MR. BREINDEL: Yes, your Honor. It is the blue book.

THE COURT: I can't even read all the names. Oh, is this the blue book?

MR. BREINDEL: Yes.

THE WITNESS: Would you mind if I looked in here which would make life easier for me?

Q Yes. By "here," are you referring to the original exhibit?

THE COURT: Yes. At least the one that is in evidence in this case. I don't know if that is original or not.

Are you interested in the names that are there or do you just want to know whether --

MR. BREINDEL: I want to know if that is an accurate representation of Goldman, Sachs' organization, commercial paper --

THE COURT: Where is the commercial paper organization shown?

MR. BREINDEL: On page 89 there is a chart entitled --

THE COURT: I ask again whether you are asking him to verify that every single person named there was on duty at the time --

MR. BREINDEL: Just generally accurate.

A Yes.

Q Can you tell me why on this chart, which is dated March 1970, there appears a box, new business liaison on the same level with you as coordinator, whereas on Defendant's Exhibit BN there is no mention of new business liaison?

A It looks like an oversight.

Q Turning to the first page of Defendant'sExhibit BN, Mr.Van Cleave, I notice in the box entitled "Corporate Finance," there is no name there, is that correct?

A Yes.

Q Was there a head of the corporate finance department at this time?

A Well, the corporate finance department was broken down into two general areas, new busiess and buying, and John Whitehead was in charge of the new business department and he had Shrader in charge of the buying department. So there was no one head of the corporate finance department.

Q Is that why the box is empty?

A Yes.

Q Going back to your duties, Mr.Van Cleave, was one of your duties -- when I say during this period I am referring to 1969, the first quarter of 1970, was one of your duties determining the interest rate on the commercial paper sold by Goldman, Sachs as principal?

A Yes.

Q Did you have primary responsibility for that?

A Yes.

Q Was one of your duties determining how much inventory of any specific issuer Goldman, Sachs would keep in inventory?

A I got lost. Do you want to give me that one again?

Q Sorry. Was one of your duties to determine how much inventory of any commercial paper, inventory of any specific issuer of commercial paper Goldman, Sachs would keep in its inventory?

A Yes, but this was done in accordance with Bob Wilson.

Q This was both the responsibility of you and Mr.Wilson?

A Right.

Q Did anybody else participate in this responsibility?

A Yes. I belive Jack Vogel also played a part in that. He would also look at that.

Q Anyone else?

A Not that I can recall.

THE COURT: As long as both sides are understandably stressing this subject, let me ask a few questions about it. In the first place, whatever decisions the three of you made I assume had to be made within whatever policy guidelines existed at that time?

THE WITNESS: That is correct.

THE COURT: Second, what were the relative positions of the three of you. Did Wilson, for example,have a veto or is that an academic question because you were relatively unanimous in your views? How did it work?

THE WITNESS: I always tried to keep him apprised of what my thinking was and find out what his thinking was. He was the boss. As names would start to increase in amounts, we discussed them and he received a copy of the top ten. Sometimes he would call me in and he would say, why aren't we selling this or is it priced right, etc., etc. Then we would get, try to get a sort of an agreement between us as to when a position reached a certain level in inventory, that we would try to reduce that position.

THE COURT: Does it stand out in your mind any times when you disagreed and in effect one of you said to the other, I am sorry, I can see why you feel that way, but I feel differently. It will be this way.

THE WITNESS: The answer is no, we always agreed.

Q Did Mr. Levy have any day-to-day responsibility in determining the amount of inventory of commercial paper of any specific issuer?

A No.

Q During this period of time did you have any duties with respect to performing credit functions?

A No.

Q Did you perform any credit functions during this period of time?

A No.

Q Who was responsible for the performance of credit functions in connection with commercial paper during this time?

A Jack Vogel was the credit man, the man in charge of the credit department who, in turn, reported to Wilson.

THE COURT: He reported to him as to the credit department, is that right?

THE WITNESS: That is correct.

Q Does Defendant's Exhibit BN to the best of your knowledge accurately set forth the composition of the credit department during this period of time?

A To the best of my knowledge.

Q Did the management have any day-to-day responsibility during this period of time with respect to fixing the particular amount of inventory of any specific issuer?

A I don't know what you mean by management.

Q The management committee.

A No.

Q I believe you testified that the management committee --

A May I back that up.

Q Certainly.

A You better repeat that. I got confused.

Q During this period of time did the management committee have any responsibility in connection with the day-to-day fixing of inventory of any specific issuer of commercial paper by Goldman, Sachs?

A No.

THE COURT: When you asked responsibility, I assume you mean literally responsibility and not authority?

THE WITNESS: Yes.

You said specific as opposed to the 250 ceiling.

Q I believe you testified, Mr.Van Cleave, that the management committee never participated in any decision either to take on an issuer of commercial paper or to cease selling such an issue, is that correct?

A Yes.

Q Were you aware that the management committee during this time had meetings?

A Yes.

THE COURT: May I ask if you know, I assume you do, whether the management committee meets regularly and if so how regularly it meets?

THE WITNESS: They do meet regularly. I am not sure how often it is. Either bi-weekly -- I think it is bi-monthly.

THE COURT: By that you mean twice a month?

THE WITNESS: Twice a month. Yes, sir.

Q Mr.Van Cleave, I am going to show you a document which has been marked -- which has been offered in evidence as Plaintiff's Exhibit 78. Can you identify this document for us?

A Yes. It is a memo to the management committee, the minutes of the meeting October 1, 1969, people present decided to instruct commercial paper department --

THE COURT: We can all read what is said. Can you tell us anything about from whom to whom, who was present?

Q When it says present, Mr.Van Cleave, can you tell us whom the initials represent?

A Gus Levy. Ed Shrader. John Whitehead. John Weinberg. And Ray Young.

Q Can you identify Mr. Shrader for us?

A Yes. He is on the management committee. In fact, he is vice-chairman of the management committee.

Q Can you identify Mr.Weinberg for us?

A I think I have done all that earlier.

THE COURT: This is essentially the management committee?

THE WITNESS: All members of the management committee.

THE COURT: Mr. Doty isn't there.

THE WITNESS: But all those listed are members of the committee.

THE COURT: I think they are all of the management committee.

THE WITNESS: That is correct. Who were in attendance.

Q Mr. Van Cleave, Plaintiff's Exhibit 78 refers to an instruction to the commercial paper department not to turn down any major client without first checking with the management committee. Was such an instruction given?

A Yes, it was.

Q Do you recall when it was given?

A Around the period of time that this is dated.

Q Was it in writing?

A No.

Q It was oral then?

A Yes.

Q Can you tell me who gave it and to whom it was given?

A I got it from -- the instruction was given to me by Wilson.

Q Did you have any discussion with Mr. Wilson at this time?

A Yes.

Q Would you tell us what Mr. Wilson said to you and what you said to Mr.Wilson?

A As best I can recollect, the management committee decided because of inventory ceilings, and that is what this is about, that we really shouldn't turn down a client of the firm until we first check with them, their major concern being if one of the companies that we have been doing business with for years, we had paper in inventory and we were over that $250 million ceiling, they wanted to know about that.

Q Did you convey this information to anyone?

A No.

Q You didn't tell it to any of the commercial paper department salesmen or buyers?

A No.

THE COURT: They wouldn't have turned down anybody anyway, would they?

THE WITNESS: Without me, no.

Q Pursuant to these instructions, did you ever have occasion to check with the management committee?

A On what?

Q As to whether or not you should turn down a major client?

A Not to my knowledge.

THE COURT: I wanted to be sure that Mr. Van Cleave was giving us everything he recalled about his own situation.

THE WITNESS: Right. Not to my recollection.

Q   Mr.Van Cleave, earlier today I believe you describe blue sheets as internal memoranda containing confidential information?

A   I said containing call reports.

Q   Did you not say that blue sheets contained confidential information?

A   I would say -- yes, they contained information that we had received from the company in confidence.

Q   Was this confidential information also non-public?

A   I don't know.

Q   Why would you term it confidential if it was not --

A   There was no way of my knowing whether they disclosed it to the public or not, but it was given to us in confidence.

Q   To the best of your knowledge was information given to you by commercial paper issuers which was then reduced to a writing, a blue sheet, non-public information?

A   You mean any time any issuer, is that what you are asking?

Q   Generally.

A   Yes, from time to time.

THE COURT: You mean yes from time to time you got such information?

THE WITNESS: Yes.

THE COURT: Or was it generally the information you got was confidential in the sense it was not released to the public?

THE WITNESS: Generally from time to time we got information that was confidential.

Q In using the word confidential, was such information also non-public?

A It is difficult for me to answer that because I didn't always know whether it was reported to the public or not. You see, mine was in the marketing role, not in the credit aspects, so this information I would see, you know, days and days later in blue sheets.

Q There were credit files on issuers and there were credit files on customers, is that correct?

THE COURT: Investors?

THE WITNESS: Yes.

Q There were credit files on commercial paper issuers and there were credit files on Goldman, Sachs' other customers, is that correct?

A Okay, yes.

Q Now, in the case of companies such as Penn Central, which is both an issuer and a customer -- is that correct?

A Correct.

Q Would there be two separate credit files or one?

THE COURT: Well --

A I don't know. You would have to ask Vogel that. That would be the guy to ask that.

THE COURT: But insofar as Penn Central was a "customer," what service or property were they buying from you?

THE WITNESS: We sold them commercial paper too.

THE COURT: Of other issuers?

THE WITNESS: Yes. Whether they were in the separate credit file or not wouldn't make any difference. The salesman that handled the sale of the commercial paper to them still wouldn't have access to the credit file.

Q I believe briefly today, Mr.Van Cleave,you testified that certain people had access to credit files of customers, is that correct?

A Yes. I wish you would --"customers" does me no good.

Q Investors, I am sorry.

A Yes.

Q Who was it that had access to the credit files of investors?

A I testified to this earlier. This was the same people that were able to see the issuer file plus the salesman,unless it was a file where someone was both an issuer and an investor, the salesman would not have access to that file.

THE COURT: That would suggest, although it certainly doesn't require the conclusion that there was only one file. I would suppose if you had two files --

THE WITNESS: Again, the best thing would be to develop that with one of the credit people and be sure.

THE COURT: Right.

Q With respect to the blue sheets, was there any general policy or guidelines as to whom the blue sheets would be sent to?

A There would be people listed on the bottom of the blue sheet.

Q What would determine whom the author of a blue sheet would send it to?

A Certainly the new businessman. Depending upon what the topic would be, you know, it could be various type of people that it would go to.

THE COURT: Who made the decision, the writer of the memorandum?

THE WITNESS: The writer, yes.

Q Going back to my question, were there any general guidelines or criteria during this period of time as to who --

A Yes.

Q What were those criteria or guidelines?

A I don't recall. I know there is a memo to that effect, but I don't recall.

Q I think you just testified that generally one of the persons to whom it was sent was the new businessman, is that correct?

A Yes.

Q Who was the new businessman in connection with the Penn Central account?

A Peter Fisher.

Q How did he become the new businessman on the Penn Central account?

A Well, we -- scratch that. Goldman, Sachs assigns new businessmen by territory and he was that person that handled the Philadelphia territory.

Q Do you know if Mr. Fisher was responsible for Penn Central becoming a commercial paper issuer account of Goldman, Sachs?

THE COURT: Who brought in the business, in other words?

MR. BREINDEL: Yes.

A To my best recollection, yes.

Q Do you know if Mr. Levy played any role in bringing in the Penn Central business?

A Not to my knowledge.

Q Aside from the new businessman, to whom generally wuld these blue sheets be sent to?

A Well, of course, a copy would go to the credit file. John Whitehead, as head of the new business department, also received a copy. Then again it goes to this question of what does it pertain to? If it pertains to a solicitation of a client that is interested in a merger, you send it to the head of the merger department.

Q If it pertained generally to commercial paper, to whom would it generally be sent?

A New businessman, credit men, the buyers, Wilson, myself.

Q And the credit man was Mr. Vogel?

A Well, not on all accounts. He would get one on everything, but there were credit men assigned to various issuers.

Q I believe you testified, Mr. Van Cleave, that your primary duty was the responsibility for the day-to-day marketing of commercial paper, is that correct?

A Yes.

Q What do you mean by marketing commercial paper?

A The buying and selling.

Q And to whom did you market Goldman, Sachs' commercial paper?

THE COURT: To whom did you sell it?

A I gave this earlier. The same type of customers I mentioned earlier.

Q Those were the sophisticated investors?

A Right. I gave quite a list of various type of institutions.

Q I believe earlier in your testimojy you characterized these people as sophisticated investors, is that correct?

A Yes.

Q What led you to your conclusion that they were sophisticated investors?

A My experience in the business. Seeing the type of transactions that went through. These are large dollar volume transactions.

Q And in connection with your duties and responsibilities, did you operate under the assumption that most commercial paper buyers were sophisticated investors?

A Yes.

Q I believe you previously testified that when a commercial bank was buying commercial paper from Goldman, Sachs, you had no way of knowing whether it was buying it for its own account or for the account of a customer?

A Correct.

Q Did you not assume, during this period of time, that when a commercial bank bought commercial paper from Goldman, Sachs, that it was buying it for the account of a customer?

A Well, you can't -- as I say, you couldn't always tell. Some banks would buy for their own account.

Q My question was, did you make that assumption?

A Did I make that assumption?

No, not necessarily.

THE COURT: Did you ever think about it?

THE WITNESS: Yes. And I thought that probably in most of the major money market banks like the Morgan and First National City, that it was a customer. And some of the outlying banks, that it was -- could very well be for their own account.

Q Mr.Van Cleave, couldn't you tell when a commercial bank was buying commercial paper from Goldman, Sachs, that it was buying for an account by the amount that it purchased?

A Not necessarily because oftentimes paper would be purchased for some aspect of the bank, maybe the trust department or some other area and you couldn't always tell from the amount whether it would be for the bank or whether it would be for the customer. The only way that you could tell was that some banks would tell us that it was an account customer.

Q To the best of your knowledge, generally speaking, what would be the minimum amount purchased by a commercial bank of commercial paper for its own account?

A Depends on the bank.

Q What is the minimum -- what is the amount --

THE COURT: It is impossible to answer that question as it is presently stated. He already stated he doesn't know when the commercial banks bought for themselves and when they didn't.

If you want to ask what is the smallest amount that you know that a commercial bank purchased, that would be okay.

Q Answer the Judge's question.

A I don't know.

Q I believe you testified previously as to the marketability of commercial paper, is that correct?

A I testified as to the marketability --

Q Marketability of commercial paper. Are you familiar with that term, Mr.Van Cleave?

A Yes.

Q What does it mean?

A The buying and selling of commercial paper.

Q I am not saying the marketing. I am saying the marketability of commercial paper. Do you have any understanding of that term?

THE COURT: I suppose he means the ease or difficulty with which you can buy or sell?

THE WITNESS: Exactly. The ease and difficulty of whether the paper sells or not.

Q And can you tell me during the period of time we are discussing what factors made commercial paper marketable?

A It varies from time to time. During times when money is tight, the paper that seems to be the most marketable would be the household names. The names that people hear every day. The General Electrics and theFords and -- I wish to state the H.J. Heinz name, such as that, names people are familiar with. Sometimes there can be rate considerations also, but --

THE COURT: Rate of interest paid?

THE WITNESS: Rate of interest paid. It really runs to whatever -- you know, the investors operate differently. What can be marketable to one issuer -- investor, I am sorry, what could be marketable for one investor might not be marketable for another. It is a difficult thing to generalize.

Q If an investor wants a certain element in a commercial paper, that makes that paper marketable to that investor?

A A certain element? What do you mean by that?

Q Let me restate that. Are there any other elements which you are aware of which would make commercial paper marketable during the period we have been discussing?

A Other than what I have just stated?

Q Yes.

A Not to my best recollection.

Q Mr.Van Cleave, do you know for what purpose an issuer uses the proceeds of commercial paper?

A Yes.

Q What is that purpose?

A For the most part it is used to finance current transactions, working capital.

Q How did you come to this understanding, Mr. Van Cleave?

A Well, Section 3(A)(3) of the Securities Act states that commercial paper proceeds will be used for current transactions.

Q Do you know if Mr. Wilson was aware of that?

A You would have to ask him that. I suggest you ask him that.

Q I appreciate your suggestion,Mr.Van Cleave. My question was do you know if Mr. Wilson was aware of that?

A I would have to assume so.

Q Did you ever discuss it with him?

A Not to my recollection.

THE COURT: I know you used the word "generally." Did you mean that to have a special significance or are you suggesting there were times when it would be normal for the proceeds of commercial paper to be used for purposes other than current operations?

THE WITNESS: It is difficult to trace dollars.

THE COURT: I am not asking how it was actually used and I am sure you could not sit around and police the proceeds, the use of the proceeds of all the items you dealt with.

But your use of the word may merely indicate sensible caution, not wanting to overgeneralize or it may indicate -- I want to know if it does -- knowledge of specific instances in which it was used for other purposes?

THE WITNESS: I do not have any.

Q I would like to show you a document which has been received in evidence as Plaintiff's Exhibit 84. Can you identify this document for us, Mr.Van Cleave?

A Without reading through the entire thing it looks like a memorandum to James Hemphill and myself regarding a corporate finance seminar.

THE COURT: Who is Mr. Rhoades?

THE WITNESS: At the time of this writing he was in charge, the partner in charge of the paper department who, because of health reasons retired and was succeeded by Mr. Wilson.

Q Mr.Van Cleave, did you receive Plaintiff's Exhibit 84 on or about April 26, 1968?

A I do not remember.

Q Do you remember whether or not you prepared any written response to this document?

A I do not.

Q If you had prepared a written response to this document, where would it be located?

A It would have been in --

THE COURT: I am a little surprised at this kind of examination at this time, Mr.Breindel. It would seem to me that you would have found out by this time in the preparation of the case if there is anything else. Hasn't Mr.Van Cleave been deposed in this case?

MR. BREINDEL: Yes, he has, your Honor. I strive for perfection but I don't attain it.

THE WITNESS: It would be in my general files, I guess, regarding commercial paper.

Q Mr.Van Cleave, did Goldman, Sachs at this time have a policy to obtain assurances from its commercial paper issuers that the proceeds from the sale of commercial paper would be used for current transactions?

MR. MANEY: Your Honor, may we establish what this time is.

MR. BREINDEL: I thought I did. 1969 through the first quarter of 1970.

A Yes, it was a policy to ask for the use of proceeds. Ask what the use of proceeds was for.

THE COURT: What was the procedure by which that request for information was made and the information was received? Was it all oral?

THE WITNESS: Yes. For the most part.

THE COURT: You people on Wall Street do the most amazing things by way of mouth, but I take it that was the custom of the trade.

THE WITNESS: Yes.

Q Was there anybody in the commercial paper department who had the responsibility for obtaining the assurance from the commercial paper issuer that the commercial paper proceeds would be used for current transactions?

A Not to my knowledge.

THE COURT: Mr.Breindel has asked a question whether there was a policy to receive an assurance that the proceeds would be used for current purposes. What was a typical question? Did you ask, can you assure me that this is going to be used for current purposes, or did you ask, what is the money going to be used for?

THE WITNESS: He is getting into all these things that I have nothing to do with.

THE COURT: Just say that you didn't because I don't want to waste time here questioning a witness who doesn't know.

THE WITNESS: These are all Wilson-Vogel questions.

THE COURT: Are they going to testify?

MR. MANEY: Yes, your Honor, we hope.

Q Mr.Van Cleave, were you aware in 1970, prior to March 13 of 1970, that Penn Central was not using the proceeds of its commercial paper sales for current transactions?

MR. MANEY: Your Honor, I understand we have a continuing objection to this line of questioning as assuming facts not in evidence.

THE COURT: I suppose it is profitable and it may be in the record now, I don't know, but you have to call -- I will have to sustain the objection unless you call to my attention the evidence to support it.

MR. MANEY: Also, your Honor, have an objection on the grounds of relevance in view of Section 3(A)(6) of the Securities Act of 1933.

THE COURT: Well, if I receive the testimony, I will receive it subject to a determination of what the status of the commercial paper here was and the exemption you are referring to?

MR. MANEY: Yes, this was a security authorized by the Interstate Commerce Commission which has a separate exemption from registration under Section 3(A)(6).

THE COURT: That doesn't affect the fact whether or not the proceeds were being used for non-current purposes. It may authorize it or it may remove it from a bar, but -- we are trying to find out at the moment what they were used for.

MR. MANEY: I objected on relevance on that basis.

THE COURT: I understand. I am receiving it without prejudice to the assertion of any rights, rather the legal position which you wish to argue.

Q Mr.Van Cleave, I now show you a document in evidence as Plaintiff's Exhibit 64. Part of that document is an ICC report dated October 29, 1969, and I direct your attention to page 4 of that and ask you if you had seen it prior to March 13, 1970?

A No.

Q Had you been aware prior to March 13, 1970, that the ICC, the Interstate Commerce Commission was concerned with Penn Central's use of commercial paper proceeds for other than current transactions?

A No.

Q Had you ever discussed the subject with Mr. Wilson prior to March 13, 1970?

A No.

Q Are you familiar with Mr. Hoffman?

A Yes.

Q Can you identify him for us?

A He worked in our credit department.

Q Did you read his credit reports with respect to Penn Central?

A I don't know. Can you have them in front of me so I can look at them?

Q Can you identify Plaintiff's Exhibit 39 for us?

A It is a review of the financial statements for Penn Central Company for the year ended 12/31/68. It has nothing to do with Hoffman.

Q Who was the author of this document?

A Michael Evans.

Q Can you tell us who Michael Evans, what position he held in June of 1969?

A He was the credit department of Goldman, Sachs.

Q Looking at Plaintiff's Exhibit 39, does it refresh your recollection as to whether or not you, prior to March 13, 1970, read Plaintiff's Exhibit 39?

A I am sorry. It does not.

Q Was it your practice during this period of time to read the credit -- the reports of credit analysis with respect to Goldman, Sachs' major issuers of commercial paper?

A I would try to when possible, but since the credit department came under Wilson and Vogel -- I mean I tried to stick pretty much to the marketing aspect of it.

Q Were you aware that the commercial paper which the plaintiff in this case purchased was part of a repurchase Goldman, Sachs had made from an individual by the name of Fletcher Jones?

MR. MANEY: I object, your Honor.

THE COURT: I will allow you to ask if it was.

Q Do you know if it was?

A Yes, it was.

Q What do you know about Goldman, Sachs' buy-back from Fletcher Jones?

A I can't recall any of the details.

Q What can you recall?

A I do know from reading for the preparation of this trial it was part of the buy-back and that's it.

THE COURT: In other words, you have no independent recollection of the buy-back at the time it occurred?

THE WITNESS: I do not.

Q Mr.Van Cleave, can you identify Plaintiff's Exhibit 117?

A It is titled -- you can read it. What do you mean by identify it?

Q Are you familiar with this document?

A No.

Q You have never seen it before?

A No.

Q Would you look towards the bottom of the page where it reports on a buy-back in the amount of $2,750,000 from Fletcher Jones?

A Yes.

Q Was that the transaction you were previously referring to?

A Yes.

Q Does this document in any way refresh your recollection as to that transaction?

A It does not.

Q Do you know who at Goldman, Sachs approved the buy-back from Fletcher Jones?

A I don't know in this specific case. If I was there at the time, I would have been the most likely one to approve it. But I don't recall approving it.

Q Do you recall if you were in your office on March 13, 1970?

A No.

Q If you were not in your office and a buy-back came in, who generally would approve it?

A It could be approved by any one of the buyers of commercial paper that I mentioned.

Q Would you briefly give me the mechanics of procedure when Goldman,Sachs bought back commercial paper from the investor, such as Fletcher Jones?

A The policy on buy-backs was that if an unexpected need for cash arose, that we could do one of three things, we could either resell it, return it to the company, or put it into our inventory position.

THE COURT: Do you mean unusual need for cash of the holder of the paper?

THE WITNESS: Of the investor. "I need my money." What we did not want to create was a second market. The investor, in turn, would call the salesman and say, "Look, I need my money on such and such a date." He would call, the salesman would call New York and would talk with myself, possibly Wilson, if he was around, or one of the buyers and say, my account needs out of this,and I would give him, if it was me, the bid at which we would take the holder of the paper out, after we took a look at which option we might go for. The best of all worlds would be to try to resell it to somebody else so we wouldn't have to take it in our inventory position.

THE COURT: Did you ever --

THE WITNESS: We have done all three.

THE COURT: Did you ever say, gee, I am awfully sorry, we just can't manage?

THE WITNESS: No, very seldom because it is such an uncommon occurrence. Less than one per cent of our transactions are buy-back. It is an unusual thing.

THE COURT: I gather you are saying as to that one per cent you generally, if not almost universally, cooperated with the investor?

THE WITNESS: Yes.

THE COURT: I would like to ask a few more questions since it is your line you are interested in developing.

This shows that between December 17, 1969 and March 13, 1970 -- let us assume it is accurate for the moment -- there are seven buy-backs of Penn Central for a total of approximately about eight million dollars, is that right?

THE WITNESS: Yes.

THE COURT: Would you care to comment on whether that was an exceptionally large number, an exceptionally large dollar volume, normal or how would you characterize it as judged by such criteria?

THE WITNESS: I would say that it was normal to low in volume.

THE COURT: In dollar volume?

THE WITNESS: Yes.

THE COURT: What about number of transactions?

THE WITNESS: Normal.

THE COURT: All right, counsel.

Q Mr.Van Cleave, who if anyone had responsibility at Goldman, Sachs to ascertain or to verify whether the investor who was seeking to have Goldman, Sachs buy back the funds actually needed, had a cash emergency?

A I pretty much left that up to the salesman. I informed them all and I said look, if we get someone who is going to continue to play the market and try to play a curve and sharpshoot us on interest rates, I am not really interested in doing business with him,but if you are satisfied that an investor is not doing that and he does need his cash, fine, we are going to go ahead and exercise one of the three options that we have.

I did not ask each salesman to get an affidavit that this guy needed his money.

Q Do you know whom, if anyone, checked with Fletcher Jones to ascertain whether he had a legitimate cash need in connection with the buy-back referred to on Plaintiff's Exhibit 117?

A I do not know who was assigned to that at that time.

Q I believe you previously testified as to the three alternatives you have when an investor approached you with a buy-back. Which alternative was followed in connection with Fletcher Jones?

THE COURT: Don't we all know?

MR. MANEY: I think Mr. Van Cleave said he didn't recall the transaction.

THE COURT: Well, in any event -- that's right, he doesn't recall, but subject to connection I gather that you intend that the plaintiff here bought at least part of the Fletcher Jones commercial paper. Obviously you have established that.

MR. MANEY: It has not been contested, your Honor.

THE COURT: It is agreed or at least it is not contested.

Q Did Goldman, Sachs have a policy with respect to advising its investors when commercial paper was being sold to them and that commercial paper had previously been purchased prior to its maturity date from another investor?

A No. We wouldn't inform them of that. It didn't mean anything so we wouldn't tell him.

THE COURT: You didn't figure it was any worse or better?

THE WITNESS: No.

Q I believe you previously testified, Mr. Van Cleave, that to your knowledge General Motors Acceptance Corporation, Ford Motors Acceptance Corporation and Sears-Roebuck Acceptance Corporation, during the period in question, had bank lines in connection with their commercial paper of less than 100 per cent, is that correct?

A Yes, but if I may just add, when one refers to total bank lines, it should be to total short term debt as opposed to just commercial paper. That is what I was referring to in those percentages. Total short term debt --

THE COURT: 35 per cent --

THE WITNESS: To bank lines, not just commercial paper.

Q And these three companies I have just mentioned, were they all finance companies?

A Yes.

Q Were they all direct issuers?

A Yes.

Q Did these three companies ever deal with a broker such as Goldman, Sachs in marketing their paper?

A Yes.

Q In what period of time was that?

A It goes back many, many years. I think Sears was one of our first customers in the late eighteen hundreds.

Q I meant to direct my question to the period in issue.

A Pardon me?

Q I meant to limit my question to the period in issue. I am sorry.

During 1969, the first quarter of 1970 did these three companies sell any commercial paper through Goldman, Sachs?

A No.

Q How did you find out this information that you just -- that you testified about?

A This is information that is in their annual reports.

THE COURT: Did I hear you say that prior to '69 or '70 these companies had done business with Goldman, Sachs in commercial paper?

THE WITNESS: Yes, dealer versus direct is one of an economic nature and if your outstandings are small, the eighth of one per cent you pay to get that paper distributed, it is much cheaper than setting up your own sales organization. When you become as large as General Motors and Ford, then they just hire their own sales force, unfortunately.

Q I believe you testified, Mr.Van Cleave, there came a time when Penn Central increased its outstanding commercial paper to $200 million, is that correct?

A Yes.

Q And when was that time?

A May I refer to the exhibits? I know it was some time in February.

Q February-- does November 1969 refresh your recollection?

A I'd have to check it.

THE COURT: Why don't you check it and be prepared to answer it first thing in the morning.

THE WITNESS: That will be fine.

THE COURT: Gentlemen, at the end of each day I am going to ask the clerk or Peter Paden here to give you back the exhibits that have accumulated during the day, so that they don't become unmanageable.

If I thought a few minutes here and there would solve our problem -- let's start at a quarter of ten tomorrow morning, just to make life miserable for Mr. Breindel.

(Adjourned to Thursday, October 30, 1975, at 9:45 A.M.)

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UNIVERSITY HILL FOUNDATION

vs. 71 Civ. 1166

GOLDMAN, SACHS & CO.,

October 30, 1975
10:00 a.m.

(Trial resumed.)

GEORGE VAN CLEAVE, resumed.

CROSS EXAMINATION (Continued)

BY MR. BREINDEL:

Q Mr. Van Cleave, isn't it true that 99 percent of a bank's orders for commercial paper from Goldman, Sachs are for the account of a customer?

A I'm not so sure I can put a percentage on it.

Q Is that approximately right, 99 percent?

A I can't put that percentage on it.

THE COURT: Well, are you saying you can't put that percentage or you can't put a percentage?

Have you ever made a study of it?

THE WITNESS: We have not, no.

THE COURT: Do you have an opinion as to what proportion, let's call it that?

THE WITNESS: I'd say a majority of the trades.

Q Do you recall testifying in the Franklin Savings Bank case?

A I do.

Q And do you recall the following questions were asked of you and that you gave the following answers:

"Q When a bank purchases or gives you an order, do these orders come over the telephone?

"A Correct.

"Q When you get that order from a commercial bank, do you know whether it's buying for its own account or for the account of a client of that bank?

"A No, but 99 percent of those transactions are done for the, for a customer."

Was that your testimony at the Franklin Bank case, Mr. Van Cleave?

A That was my best recollection at the time.

Q Is it your testimony now that that recollection was accurate when given?

A I don't understand the question.

Q When you testified at Franklin, the testimony I just quoted to you, did you believe it was accurate, accurate when you gave it at the Franklin trial?

A Yes.

THE COURT: Well, I don't want to quibble; I don't think Mr. Breindel does either.

There you said 99 percent. Here today you say you can't say 99 percent.

What's the reason for the difference?

THE WITNESS: Well, I came out fast and said it's about 99 percent.

THE COURT: On reflection --

THE WITNESS: It's probably high.

THE COURT: Probably overstated?

THE WITNESS: Yes.

Q Mr. Van Cleave, did there come a time when Penn Central was authorized by the ICC to increase its paper commercial outstandings from 150 million to 200 million?

A Yes.

Q And do you recall when that was?

A I do not.

Q Did there come a time when, as a result of the authorization, Penn Central increased its outstanding commercial paper from 150 million to 200 million?

A Yes.

Q And approximately when was that?

A I believe it was late 1969.

Q Now, at the time that the Penn Central increased its outstandings to 200 million, how much in bank loans did it have?

A I don't recall the number offhand.

Q Do you recall if during all the time Goldman, Sachs was selling Penn Central commercial paper it had more than 100 million in bank lines?

A Give me that again, I'm sorry.

Q To the best of your recollection, during the entire period during which Goldman, Sachs sold Penn Central commercial paper, did Penn Central ever have more than $100 million in bank lines?

A My best recollection is no.

Q Do you have any recollection as to whether they had less than 100 million in bank lines during this time?

A No, I don't recall whether at the beginning of the program, it was less than a hundred or if it was a hundred all the way.

Q As of September 1969, there was a stronger emphasis on bank line coverage by commercial paper investors, is that correct?

A Of when?

Q As of September 1969, commercial paper investors were putting a stronger emphasis on bank line coverage.

A I can't recall exactly when the time period was, but I do know that that was what we told the officers of the railroad in December, which was reported in my blue sheet.

THE COURT: Is this the blue sheet?

THE WITNESS: No, it is not, it is not the blue sheet that I just referred to, your Honor.

Q Can you identify Plaintiff's Exhibit 24?

A It is a copy of a blue sheet, Penn Central Company, written by Jack Vogel.

Q Did you see it on or about September 1969?

A I would have to assume so, because my initials are on that.

Q Would you read the first paragraph to yourself and tell me if that refreshes your recollection as to whether or not in September of 1969, commercial paper investors were putting a stronger emphasis on bank line coverage.

A Yes, it refreshes my recollection that there was a stronger emphasis placed on bank line coverage by investors. This is not uncommon during tight money periods, and this is when this tight money period started.

Q And the tight money period started in September of 1969.

A Sometime, I don't know the exact date.

Q And is it your belief that as of September 1969 commercial paper investors had become more interested in bank line coverage because of the right money market?

A Yes.

Q How did you come to that belief?

A Well, as I testified to yesterday, the input that I would get from salesmen throughout the organization as they were selling paper, they would pick that up from their investors. That would be passed on to me.

Q Was this the feedback information you referred to yesterday that you got from your salesmen?

A Yes.

Q And did you get this feedback information during the 9:30 to 12:30 period of the day, 9:30 in the morning to 12:30 p.m.?

A I possibly could have.

Those type of telephone calls I encouraged to be done late in the day, when one had more time to talk.

Q To the best of your knowledge, is Plaintiff's Exhibit 20 accurate?

A To the best of my knowledge.

Q And do you know why a copy of it was sent to you?

A It was common practice to send a copy of a blue sheet to me on any of our commercial paper issuers.

Q Do you know why a copy of this was sent to Mr, I believe PAF is Peter Fisher, is that correct?

A Yes, new business man.

Q Do you know why a copy was sent to Mr. Levy?

A Yes, because Mr. Levy had also had conversations with and knew the Penn Central officers.

Q In the paragraph 2 of Plaintiff's Exhibit 20, Mr. Vogel states that, quoting Mr. O'Herron, "He feels that the company has receivables of $240 million which could be used to back commercial paper and has investments in various securities which could be liquidated in an emergency.

"Furthermore, a $40 million financing being contemplated by the Pennsylvania Co. could be increased according to O'Herron. John feels that all of these factors should be considered in lieu of increasing bank lines."

Did you agree with that feeling at the time?

A I'm not a credit man. I have told you that before. I really kept my business in the marketing aspect, and relied on Wilson and Vogel.

Q You had no opinion as to that?

A No.

Q And the credit questions are beyond your concern, is that correct?

A Yes.

Q They're best left to Mr. Vogel and Mr. Wilson?

A Yes.

Q To the best of your knowledge, Mr. Van Cleave, is the information contained in Plaintiff's Exhibit 20, was it at the time non-public information.

A I'd have to go through the entire thing.

THE COURT: Certainly the public knew, for example, that Penn Central had substantial assets.

THE WITNESS: And bank lines.

MR. BREINDEL: I will withdraw the question.

Q Going back a little bit, Mr. Van Cleave, do you recall that there came a point in time when Penn Central increased its outstanding commercial paper from a hundred million to 150 million?

A Yes.

Q And approximately when was that?

A I can't recall.

Q Sometime the beginning of 1969?

A I'd have to refresh my memory which I could do from C. W., I think, or one of the exhibits.

THE COURT: I would like to know the period we are talking about. It seems to me that is of some significance. Maybe Mr. Maney and Mr. Breindel can agree as to when that was.

That is from a hundred to hundred fifty?

MR. BREINDEL: Yes.

A The outstandings reached a hundred fifty million on April 1st, 1969.

Q Prior to that date, Goldman, Sachs had had discussions with Penn Central about increasing the outstandings from hundred to hundred fifty million, is that correct?

A Yes.

Q And do you know whether in the course of those discussions Goldman, Sachs made any recommendations to Penn Central with respects to Penn Central's increasing its bank lines to cover the increase in outstanding commercial paper?

A I do not.

THE COURT: Would you know if there were any conversations?

THE WITNESS: If it was reported to me in a blue sheet, which possibly could have happened.

THE COURT: I'm not quite clear whether you think it is possible that there were such conversations and you didn't know about them, or you think it is not likely that there were such conversations.

THE WITNESS: Well, I'm sure that when, well, I know when the outstandings were at a hundred million, that there were discussions as to whether they could raise that amount to a hundred fifty.

I don't remember what they were, but I know we talked to the company about them.

THE COURT: That's a separate question from whether there was a discussion of bank line increases. Isn't that what your last question was?

MR. BREINDEL: Yes.

THE COURT: Well, let's go on.

Q Mr. Van Cleave, can you identify Plaintiff's Exhibit 21 for us?

A There's a copy of three blue sheets.

Q I'm just referring to the first blue sheet the one dated February 27, 1969.

A Copy of a blue sheet written by Peter Fisher.

Q Does that in any way refresh your recollection?

A My initials aren't on this blue sheet to see, so I can't remember whether I saw it or not, whether it was passed on to me or not.

Q This blue sheet was not addressed to you, is that correct?

A Yes, that is correct.

Q Do you know why it wasn't addressed to you?

A No.

Q Was this the type of blue sheet that ordinarily would be addressed to you?

A Yes, normally.

Q Can you tell me why this blue sheet was addressed to Mr. Evans, among others?

A Mr. Evans was the man that wrote that credit report that you showed me yesterday.

In the Credit Department. He worked in the Credit Department.

Q Is that why you think it was addressed to him?

A Yes.

Q The blue sheets involving a commercial paper issuer, was it the custom of Goldman, Sachs to address such blue sheets to the credit man assigned to that account?

A Yes.

Q Do you know how much bank lines Penn Central had prior to increasing its outstanding commercial paper from 100 million to 150 million?

A I do not.

Q Can you recall any discussions involving bank lines with Penn Central during the period from December 9, 1969 through February 4, 1970?

A Yes, I recall discussions of bank lines that I reported in my December 9th 1969 blue sheet.

Q That is Plaintiff's Exhibit 22?

A Beats me.

THE COURT: Is that the one you are referring to?

THE WITNESS: Yes.

THE COURT: What is that, 22, number 22.

THE WITNESS: Yes.

THE COURT: What's the date of it?

THE WITNESS: December 9, 1969.

THE COURT: I think Mr. Breindel asked if you had any conversations on the subject between December 9 and February 4, is that right?

MR. BREINDEL: Yes, he did.

Q The question is after this metting on December 9, '69, prior to February 4, 1970, did you participate in any discussions with Penn Central with respect to bank lines?

A I don't remember.

Q When I use "bank lines," Mr. Van Cleave, I'm using it in connection with commercial paper.

A In connection with --

Q I'm not talking about bank lines in a vacuum, but bank lines in connection with the backup commercial paper.

A I understand.

THE COURT: Can I ask a question about PX 21 here. I don't know if you can answer it because I know you didn't write it and it wasn't addressed to you. But it says, "After consultation with" whoever it is, "JHR" and so forth, "I advised" so and so, "that their plan for the increase by 50 million in commercial paper outstandings to a hundred fifty million did not require the Penn Central to increase their lines of credit due to the temporary nature of the program and their access to credit."

Do you know what is meant by the phrases, "the temporary nature of the program" and "their access to credit"?

A I believe what that was was, as soon as the bond market got in good condition, and interest rates were favorable, they were funded long term. That is my best recollection.

THE COURT: That's what's meant by the temporary nature of the program?

THE WITNESS: Yes.

THE COURT: What's meant by their access to credit, if you know?

THE WITNESS: Access to the bond market. Or increasing lines, if they had to.

Q By funded long term, Mr. Van Cleave, are you referring to the fact that instead of keeping the additional 50 million in short-term securities, they would pay off the 50 million and replace them with a long-term bond debt?

A Yes.

Q And was that contemplated by Penn Central in or about February 1969?

A During this time period it was contemplated at various times. I can't pinpoint a date for you.

Q But they never were able to effectuate that, is that correct?

A That's right.

Q To the best of your recollection, during the period from September 11, 1969 -- make that September 19, 1969, through December 8, 1969, did you participate in any discussions with Penn Central involving bank lines?

THE COURT: What was the earlier of the two dates, between when and when?

MR. BREINDEL: My prior question, which I will get back to, your Honor, was between December 9, '69 and February 4.

THE COURT: I know. And this one?

MR. BREINDEL: Between September 19, 1969 through December 9, 1969.

THE COURT: Thank you.

A I can't recall.

Q If you had in the ordinary course of events, would there be a blue sheet in connection with such a conversation?

A Most likely, yes.

Q Now, during this period, that is the period from September 19, 1969 through December 9, 1969, had

Goldman, Sachs encountered any market resistance to Penn Central's commercial paper because it only had 50 percent bank line coverage?

A Give me the dates again, please.

Q September 19, 1969 through December 9, 1969.

A Not that I can recall.

Q Now, in Plaintiff's Exhibit 22, your blue sheet, in connection with the December 9, 1969 meeting, again there is a reference to the fact that investors would not buy commercial paper, some investors would not buy commercial paper unless there was a hundred percent line coverage. Was this your first awareness of investors wanting 100 percent line coverage in commercial paper issuers?

A That is difficult for me to answer. I knew that during some time in this time period that some investors were starting to look for more coverage, but I can't be specific as to the dates, sir, when I first knew it, and it was just the beginning of something, so it is not as if it was a major --

Q To the best of your recollection, Mr. Van Cleave, when did you generally become aware that some investors were interested in 100 percent bank line coverage?

A Sometime during this period of late '69.

Q Going ahead, during the period from December 9, '69 through February 4, 1970, did you participate in any discussions with Goldman, Sachs with respect to increasing, with Penn Central, with respect to increasing bank lines?

A You will have to give me that again.

Q During the period from December 9, 1969, through February 4, 1970, did you participate in any discussions with Penn Central involving bank lines?

A I think I answered that, didn't I, your Honor?

THE COURT: You might have. I'm not quite clear.

He's asking again for the period December 9, 1969 to February 4.

THE WITNESS: That would be after this?

THE COURT: Yes.

A No, not to my knowledge. Not that I can recall. Sorry.

Q Do you recall that Goldman, Sachs had discussions with bank lines with Penn Central on February 5, 1970?

A Yes, I recall, I don't know if I recall from reading it immediately after it happened, or going through these trials, but I know Wilson wrote a blue sheet on the 5th which refers to bank lines.

THE COURT: You were not at the meeting that the blue sheet refers to?

THE WITNESS: I was not.

Q The blue sheet you are referring to, that is Plaintiff's Exhibit 11.

THE COURT: He's not going to know offhand.

(Document produced.)

THE COURT: Is that the blue sheet that you were referring to?

THE WITNESS: Yes.

Q And did you receive this on or about February 5th, 1970?

A Yes.

Q Did you discuss either this blue sheet or its contents with Mr. Wilson on or about February 5, 1970?

A I can't recall. I'm sure we must have talked about it, but I don't recall a meeting per se.

Q I direct your attention to the second paragraph on the first page. Mr. Wilson, the writer of this blue sheet says:

> "I told John (meaning John O'Herron) it was unfortunate that we did not have some indication of the magnitude of the total losses for 1969 as we are going to need a story to tell existing holders of Penn Central's paper and new purchasers' paper."

THE COURT: Where did you say this was?

MR. BREINDEL: First sentence of the paragraph.

THE COURT: All right.

Q Now, did Mr. Wilson ever discuss with you a story to tell existing holders of Penn Central paper and new purchasers of paper?

A No.

Q Did, to use Mr. Wilson's phrase, Goldman, Sachs ever tell a story to its existing holders of Penn Central paper and new purchasers of the paper with respect to the February 4th news, about Penn Central's losses.

A You see, story, I have a problem with that. It's Wilson's word. I don't know what it means. Does that mean did we make our usual financial statements and send them out? That's where I have a problem with that.

THE COURT: Just tell us what you know about what did happen. Put it that way, whether any statement or an announcement was made, and then Mr. Breindel can go further and ask you if it was factually accurate as far as you know.

A I know we prepared our usual financial statements.

Q Usual financial -- when you say "usual financial statements" --

A Yellow, white and green that has been referred to earlier.

Q What was the occasion for you to prepare these usual financial statements?

A Matter of practice.

Q I believe in connection with this story language, you testified that Goldman, Sachs prepared its usual financial statements.

A Yes.

Q So were these usual financial statements prepared in connection with the announcement on February 5th of Penn Central's losses?

A As soon as financial information becomes available and is presented to us, then we print up our statements.

THE COURT: Are you telling us that so far as you know, whatever announcements were made by, or statements made by Goldman, Sachs in relation to these figures were done by routine mechanisms, and if not, what else was done?

THE WITNESS: I'm saying routine mechanism, as my best recollection.

Q Now, I believe you testified, Mr. Van Cleave, that, to use your words, as soon as Goldman, Sachs was made aware of this financial information it came out with its usual financial statements, is that correct?

A Well, as soon as we received the statement, the audited statements.

Q In connection with the February 5, 1970 news of Penn Central's losses, did Goldman, Sachs come out with any financial statements?

A I can't recall.

Q Would you look at Plaintiff's Exhibit 45 and tell me if you can identify that?

A Yes, the top page is a green sheet, and the second page is the yellow sheet.

MR. MANEY: Your Honor, Plaintiff's Exhibit 45 is a green sheet dated February 18, 1970. It should be one page. If there is any other document there, it shouldn't belong in that exhibit.

THE COURT: He's entitled to offer whatever it is. We ought to get this number straightened out.

MR. BREINDEL: Let's remove the second page.

THE COURT: The first page is the same one as you had in mind, Mr. Maney, right?

MR. MANEY: Yes, your Honor.

MR. BREINDEL: Yes.

THE COURT: All right.

Q Mr. Van Cleave, is Plaintiff's Exhibit 45 the financial statement issued by Goldman, Sachs in connection with Penn Central's announced losses on February 5, 1970?

A Yes.

THE COURT: I want to note for the record it is not a financial statement in the accountant sense of the word. It is a statement in relation to the finances of the railroad, is that correct?

THE WITNESS: That is absolutely correct.

Q And did you participate in the preparation of Plaintiff's Exhibit 45?

A No.

Q Did you ever participate in the preparation of any white, yellow or green sheets?

A No.

Q Are you familiar with the preparation of white, yellow or green sheets?

A What does that mean?

Q Were you ever called upon to participate or supply information which appeared in any white, yellow or green sheets?

A No, not that I can recall.

Q Did you ever make any recommendations or suggestions that a white, yellow or green sheet should be issued?

A No.

Q Are you familiar with the criteria which are used in determining whether a white, yellow or green sheet will be issued by Goldman, Sachs?

A In a general way.

Q And what's your general knowledge?

A When you receive the company's annual report, you print up the white sheet and the yellow sheet. When you receive interim financial information you send out a green sheet.

Q Other than that, are you familiar with the criteria used?

THE COURT: You don't have a black sheet for bad news?

THE WITNESS: No. We sure use enough colors though, don't we, blue, green, white.

Q Other than that general knowledge, do you have any more greater familiarity with criteria used in determining whether or not a white, yellow or green sheet should be issued?

A No.

Q If you would turn your attention again to paragraph 2 of Plaintiff's Exhibit 11, Mr. Van Cleave, would you agree with Mr. Wilson's statement that it was our judgment that this news will have an adverse effect on Penn Central's sales of commercial paper?

A I felt that there was a very good chance that it could be, but it is really, really was an unknown, but the possibility sure existed

THE COURT: What item was it that you felt might have that effect?

THE WITNESS: The sale of -- adverse effect on the sale of their commercial paper.

THE COURT: What particular item did you feel would have an adverse effect on the sale of the commercial paper?

THE WITNESS: The news that had been published.

THE COURT: Of the losses?

THE WITNESS: Yes.

Q Why did you feel that way, Mr. Van Cleave?

A Well, any time any kind of news comes out that might be considered somewhat negative, it can have a reaction to investors in the commercial paper market, even though Goldman, Sachs didn't think that this was negative, why, investors might.

Q Mr. Wilson's statement in paragraph 2 refers not to the reaction of Goldman, Sachs, but to the possible reaction of commercial paper?

A To investors, yes.

Q I direct your attention to the first paragraph of Plaintiff's Exhibit 11.

THE COURT: Excuse me. I am having some difficulty finding the statement you are referring to here. "I told him it was our judgment"?

MR. BREINDEL: Yes.

THE COURT: Second sentence in the second paragraph?

MR. BREINDEL: Yes.

THE COURT: Thank you.

THE WITNESS: Would it be proper for me to make a comment about what actually did happen?

THE COURT: I think you had better leave that to Mr. Maney to ask you, if he wants to.

I certainly want to know before the trial is over, yes, or before your testimony is over.

Q If you would, Mr. Van Cleave, would you turn your attention to the first paragraph of Plaintiff's Exhibit 11. In there there is a reference to the fact Mr. Wilson asked Penn Central what their cash picture looked like for the first six months of the year and Penn Central said it would be very tight.

Was that information public knowledge at the time?

A I don't know.

Q In your opinion, would commercial paper investors be affected in their judgment of buying Penn Central commercial paper if they had known that?

MR. MANEY: I object to the question. It is asking for a judgment on a purely hypothetical question.

THE COURT: I think Mr. Van Cleave is exceptionally qualified. I have to decide that sooner or later somehow. I will allow the question.

A It depends. Certain investors it might concern, others it would not. It is difficult for me to say whether it would or it wouldn't.

Q Would it be likely to increase an investor's concern if he was aware of both Penn Central's announced losses and the tight cash picture for the first six months of 1970?

A It could have. There is just no way I can answer the question.

Q Going back to the second paragraph of Plaintiff's Exhibit 11, Mr. Van Cleave, did you agree with Mr. Wilson's recommendations that the most important thing Penn Central could do was to get another 100 million in stand-by lines to back up their commercial paper?

A Yes, I thought that was sound financial advice.

Q Did Penn Central ever accept this and adopt this sound financial advice?

A No.

Q I believe you testified yesterday that Penn Central repurchased $10 million of commercial paper, of its own commercial paper, from Goldman, Sachs on February 9.

A I did.

Q And did you use backup lines to pay for this purchase?

A Yes.

THE COURT: Would you explain to me mechanically what you mean? You mean that they got the money from the banks, from their backup lines with the banks, to pay for the notes?

THE WITNESS: Yes.

Q Did that reduce their percentage of bank line coverage at the time?

A No.

Q Was this because it was a swing line? Let me rephrase that. I believe it is your testimony that Penn

Central used bank lines to pay for the $10 million repurchase, is that correct?

A That's right.

Q So that if at the time they had 100 million in the bank lines and they used 10 million to pay Goldman, Sachs with, didn't that reduce their bank line coverage to 90 million?

A What one looks at is coverage for total short-term debt and they still had a total of -- I don't think it changed the amount of the total short-term debt.

THE COURT: But the short-term debt was reduced, too, wasn't it?

THE WITNESS: Not really, because it went from paper to bank.

THE COURT: You mean instead of owing you they owed the bank?

THE WITNESS: They --

THE COURT: They had to pay in approximately the same amount of time?

THE WITNESS: I don't understand.

THE COURT: Would they have had to pay them in approximately the same amount of time they would have had to pay you?

THE WITNESS: This was on that swing-line basis

I spoke about.

THE COURT: So the answer is yes?

THE WITNESS: Yes.

Q I direct your attention to the last paragraph on Plaintiff's Exhibit 11, Mr. Van Cleave -- I am sorry -- the last sentence of paragraph 2 in Plaintiff's Exhibit 11. In there there is a reference to the fact that Mr. Wilson is telling Penn Central: "When I said our procedures in the future would probably be set up so we handle their paper only on a tap-issue basis where Goldman, Sachs did not inventory their notes" --

A I am looking at the last sentence and I don't see that.

THE COURT: First page.

THE WITNESS: I thought you said it is the last paragraph. I am sorry.

THE COURT: Indeed, on my copy, I don't know whether it is intended or not, it is in brackets. For emphasis, I assume.

MR. BREINDEL: I believe the copy is from defendant's files, your Honor, not from our files.

MR. MANEY: If there is a bracket around it, it is certainly not from defendant's files.

Q Mr. Van Cleave, going back to the last sentence of the second paragraph of Plaintiff's Exhibit 11, do you see the reference to handling Penn Central's paper on a tap-issue basis?

A Yes.

Q What does that mean?

A What that means was that we would operate against order only.

Q There would be no inventory?

A Right. Probably.

Q At this time, did Mr. Wilson, to the best of your knowledge, tell Penn Central that this proposed tap-issue basis was to be done on an experimental basis?

THE COURT: You are asking if who told who that?

MR. BREINDEL: Wilson told Penn Central.

MR. MANEY: Objection.

THE COURT: Mr. Van Cleave wouldn't necessarily know.

Do you know?

THE WITNESS: No.

Q In the ordinary course of events, Mr. Van Cleave, if Mr. Wilson had told that to Penn Central on February 5, 1970, would he have put it in his blue sheet?

A You would have to ask him that. I would think so.

Q Prior to February 5, 1970, how long did you work with Mr. Wilson?

A When I moved to New York August 1, 1968.

Q And between August 1, 1968, and February 4, 1970, were you familiar with Mr. Wilson's blue sheet writing habits?

A I guess, yes.

Q And was he a very careful writer of blue sheets?

A Yes.

Q To the best of your knowledge, were most of the blue sheets on Penn Central written by Mr. Wilson?

A Yes.

Q Are you aware of any inaccuracies in any of Mr. Wilson's blue sheets?

A No.

Q To the best of your knowledge, would Mr. Wilson fail, deliberately fail, to omit a fact from a blue sheet?

A No.

Q Mr. Van Cleave, could you briefly identify Plaintiff's Exhibit 12 for us?

A February 6, 1970, blue sheet written by Wilson regarding the railroad, Penn Central Transportation Company.

Q Would you look at the second page.

A And also a blue sheet memorandum of February 12, also written by Wilson.

Q But both --

MR. MANEY: We note for the record the February 12 blue sheet is Plaintiff's Exhibit 13.

MR. BREINDEL: There is one thing I want to see if I can straighten out.

THE COURT: It looks like February 12th is on the same sheet as the second sheet of February 6th.

Is that right?

MR. MANEY: That's correct, but it has a separate exhibit number.

MR. BREINDEL: We will withdraw Plaintiff's Exhibit 13, which is the February 12, 1970, blue sheet.

Q Is that correct, Mr. Van Cleave, that the blue sheet of February 6, 1970, and February 12, 1970, were one document prepared by Mr. Wilson?

A To the best of my knowledge, yes.

Q And that document is Plaintiff's Exhibit 12?

A It has two numbers on here.

Q The document you have in front of you?

A Yes.

Q Would you turn your attention to the third paragraph of Exhibit 12.

THE COURT: Bottom of page 1?

MR. BREINDEL: Yes.

THE COURT: Let's see who is on this. First is GLL. Mr. Levy, I take it.

"I had lunch today with Dave Bevan, John O'Herron and Bob Loder."

That is the cast of characters, I take it.

Now, do you want to refer to the bottom of the page.

Q Turn your attention to the third paragraph of Plaintiff's Exhibit 12. It states: "We then got into a discussion of commercial paper."

Do you know to whom the "we" refers?

A I have to assume --

THE COURT: How can he know any better than we do? That is what I am trying to establish from the memorandum itself.

Q To your knowledge, does the "we" refer to Goldman, Sachs' position?

THE COURT: This is quibbling, isn't it? What else could it be?

You don't take issue with that, do you?

THE WITNESS: Not at all.

THE COURT: I want to be sure we know who we are talking about. I am sure it is Goldman, Sachs. As I see it, Mr. Levy and Mr. Wilson are from Goldman, Sachs.

Q Did you agree with the statement in paragraph 3--

THE COURT: Did he does he.

Q At the time, did you agree with the statement in paragraph 3 that if Penn Central didn't get a $100 million increase in their bank lines to bring them up to 100 percent line coverage their present level of 200 million outstanding commercial paper may run down by 50 million to a hundred million?

A I thought that that possibility certainly existed.

Q And why did you feel that that possibility existed?

A Well, because it was still a tight money period.

Q Would you elaborate on that?

A That is what I have gone through before. We were still in a very tight money period and there also was an announcement of losses, as referred to in the blue sheet, and we thought -- Wilson thought this was good financial advice.

Q Did you agree with the statement that if Penn Central did not increase its bank lines to 100 percent that the drop in outstandings might be in the range of 50 million to a hundred million?

A It is so difficult to tell. You learn it didn't even happen. It is very difficult to say 35 million is going to run off because you have 75 percent coverage. You can't put a number.

THE COURT: You did believe, though, unless they increased their bank line substantially there might be substantial erosion in the amount of commercial paper outstanding, is that right?

THE WITNESS: Right. What we were driving at is these people did not want to increase their bank lines. They want Goldman, Sachs to continue to bank this stuff and we were trying to put the pressure on them to get the lines.

THE COURT: It is clear.

MR. BREINDEL: Would you read the last answer.

(Record read.)

Q And Goldman, Sachs put the pressure on them to get the lines by saying "If you don't get the lines your outstanding paper will be reduced because it will be less attractive to investors," is that correct?

A I can't answer that. I think you have to ask Wilson that. I am sure that was a portion of it.

Q Mr. Van Cleave, you just testified Goldman, Sachs was trying to put the pressure on Penn Central; is that right?

A Yes.

Q Can you tell me how Goldman, Sachs was trying to pressure Penn Central?

A They were trying to get them to get additional bank lines.

Q What was your leverage?

What was behind this pressure? What was your force? What were you using to pressure them?

A We were trying to tell them that the possibility of commercial paper run -off existed and it was more than pressure, it was a definite possibility.

THE COURT: I gather you are saying that it was a bargaining argument, if you call the process bargaining, but you also believed it to be correct, is that correct?

THE WITNESS: Yes, the possibility definitely existed.

Q At the bottom of the first page of Plaintiff's Exhibit 12 it states: "We said that in the future we did not feel we could inventory as much of the Penn Central as we had in the past and that Goldman, Sachs felt that $5 million at any one time would be our limit."

To the best of your knowledge, Mr. Van Cleave, when Goldman, Sachs was discussing this limit with Penn Central, did they tell them the limit would be on an experimental basis?

THE COURT: I don't see how he can answer that. Are you talking about this memorandum or what happened at the meeting?

MR. BREINDEL: At the meeting.

THE COURT: He wasn't at the meeting.

MR. BREINDEL: He was in daily contact with Wilson.

THE COURT: Did anybody tell you whether Penn Central was advised that reduction would be on an experimental basis?

THE WITNESS: Not that I can recall.

Q And again, Mr. Van Cleave, in the ordinary course of events if Penn Central had been told this at the meeting, it should be in the blue sheets, is that correct?

MR. MANEY: I object to the question. It is purely speculative.

THE COURT: Sustained.

Q Now, during the period from the Fall of 1969 through the first quarter of 1970, was it your understanding with respect to bank lines that all available Penn Central bank lines could be used by Penn Central without qualification?

A Yes.

THE COURT: Could you read back that question and answer.

(Record read.)

THE COURT: I don't understand it. Even if the witness understands the question, I don't.

What does it mean to you to say the lines could be used without qualification?

THE WITNESS: In other words, the lines were there to borrow the dollars and assuming the normal hedge that's in a bank line, that the financial affairs of the company are sound, we assumed they had access to those lines.

THE COURT: Does it boil down to your meaning there were no special conditions to the use of bank lines that you knew of?

THE WITNESS: That's right.

Q So that, Mr. Van Cleave, during this period of time it was your opinion that there was a qualification in the bank lines, is that correct?

A No, I didn't say that.

Q Didn't you just say there was a condition?

THE COURT: No, without any special condition, I asked him. He said yes.

I understand your testimony so far to add up to this, that there were no special conditions that you know of with respect to Penn Central's right to use its bank lines, there is always the implied condition that the financial affairs have to be in order.

THE WITNESS: That's my testimony.

Q That fact, the condition of the companies have to be in order, is a qualification upon Penn Central's ability to use bank lines?

THE COURT: We want to know what his opinion is and he has made it clear. He doesn't happen to call it a qualification, but he admits it existed here as it always exists in every situation.

Q Mr. Van Cleave, let me ask you again, during the period from September, 1969, through the first -- I am sorry --during the period of the last quarter of 1969 through the first quarter of 1970, was it your opinion that Penn Central could use its bank lines without any qualification?

THE COURT: Including without the qualification that its affairs be in order.

Q Including without the qualification that its affairs be in order.

A Including that as a qualification?

THE COURT: Yes. I think you have already testified -- let's not confuse the record.

You agree, do you not, Mr. Van Cleave, that it was not your understanding that Penn Central could use its bank lines if its affairs were not in order?

THE WITNESS: Correct.

Q And it is your understanding that that is not a qualification, is that correct?

A It's an opinion of mine.

THE COURT: He doesn't happen to term it a qualification. There is no law that says it is a qualification.

You agree it is a factual qualification?

THE WITNESS: Yes, as it exists in all bank lines.

THE COURT: That is why I asked about special conditions.

Q Are you aware of approximately how much of the 100 million in bank lines Penn Central had that it actually used prior to the bankruptcy?

MR. MANEY: I object, your Honor. That goes beyond the date of purchase.

THE COURT: Let's see what Mr. Breindel has in mind.

A I know they used some of the lines. I don't have the dollar numbers.

Q Are you aware that it was in the area of

$96 million?

THE COURT: As at what date?

MR. BREINDEL: Prior to the bankruptcy.

THE COURT: You mean immediately prior?

MR. BREINDEL: Yes, as of the time of the bankruptcy.

Q Were you aware that as of the time of the bankruptcy Penn Central had drawn down approximately 96 million of its outstanding 100 million in bank lines?

THE COURT: If you are asking as of the time of the bankruptcy, I will sustain the objection. It might be relevant up to March 13.

MR. BREINDEL: If the answer is yes, it is relevant to show the amount, if any, of qualifications and the range of those qualifications if they were able to use the bank lines.

MR. MANEY: I object. It only shows the banks believed Penn Central would continue to be viable.

THE COURT: That is to your advantage. Do you still object?

MR. MANEY: I am not objecting if Mr. Breindel can establish the dollar amount.

THE COURT: I am not going to go on the assumption it isn't proven. Do you object to his asking the question or not?

MR. MANEY: I am perfectly prepared, your Honor, to submit a list of the banks that had the lines drawn down, the dollar amounts that were drawn down, providing we can also have the letter agreement as to the conditions under which those lines could be drawn down.

THE COURT: In other words, you object to the question as it is put?

MR. MANEY: The question as put.

THE COURT: I will sustain the objection.

Q Can you identify Plaintiff's Exhibit 23 for us, Mr. Van Cleave?

A Yes, a blue sheet dated March 5, 1970, written by me.

Q Is it accurate?

THE COURT: You mean does it describe the facts which it describes accurately?

Q Are the facts set forth in Plaintiff's Exhibit 23 set forth accurately?

A To the best of my knowledge.

Q And can you tell me why on March 5, 1970, you were participating in a call to Mr. O'Herron about credit questions?

A May I refresh --

MR. MANEY: I object to the characterization in the question. The document speaks for itself.

THE COURT: I will sustain the objection and allow the following question, which I think is sufficient for your purposes.

Can you tell us how you and Mr. Vogel happened to call Mr. O'Herron?

THE WITNESS: As I recall, I was substituting for Mr. Wilson, who was out of town and brought in Vogel to handle the credit aspect of the call.

Q Mr. Van Cleave, in the first paragraph of Plaintiff's Exhibit 23 appears the language "We also had some credit questions."

What do you mean by credit questions.

A The items that are referred to in the portion of that blue sheet that Vogel covered. In fact, the reason -- what I did was I incorporated it all in one blue sheet. My recollection is Vogel really wrote that.

Q Did Mr. Vogel also ask the credit questions which appear after that sentence?

A I didn't really participate in that part of the call.

Q Again, do you recall --

THE COURT: You were still on the phone; you mean you didn't talk?

THE WITNESS: No, I wasn't even in the room when he talked to Schaeffer.

THE COURT: Where did you get the information?

THE WITNESS: I asked him to write it out for me. I said, "Why don't I incorporate it on one sheet."

Q Do you recall testifying at your deposition on January 21, 1971, in the consolidated Penn Central cases?

A Yes.

Q And do you recall being asked the following questions and giving the following answers on pages 68 and 69.

"Q Going back once again to the March 5, 1970, call?

"A Yes.

"Q Was it March 5th, incidentally?

"A I think so. That was the date.

"Q Did you say anything else to O'Herron?

"A I asked if there was any progress made in the establishing of your old dollar lines.

"Q What did O'Herron say?"

"MR. MANEY: I am completely lost. I can't find this at all.

"(Counsel confer.)

"Q What did O'Herron say?

"A And he said that we should have Vogel talk to Schaeffer about that, John Schaeffer.

"Q In other words, O'Herron gave no response himself?

"A Not that I recall.

"Q Did Vogel say anything in that telephone conversation?

"A Not that I recall.

"Q Did you have credit questions that you wanted to ask O'Herron in that telephone conversation of March 5, 1970?

"A We had a credit question which was the Eurodollar credit, the establishment, to find out what the progress of that was."

Do you remember those questions and answers?

A Yes.

Q Does that refresh your recollection as to whether Mr. Vogel participated in the telephone conversation, asked credit questions of Mr. O'Herron?

THE COURT: As to whether Mr. Vogel asked?

MR. BREINDEL: Yes.

THE WITNESS: I am lost.

THE COURT: I thought Mr. Van Cleave did say Mr. Vogel did ask the questions. I am confused now but I wasn't before.

I thought that the burden of Mr. Van Cleave's testimony on PX 23 was that he did not participate in that part of the conversation that related to credit.

The implication was that Vogel handled that. Isn't that consistent with his earlier answer?

MR. BREINDEL: I wasn't clear, your Honor.

Q Mr. Van Cleave, was Goldman, Sachs the exclusive dealer for Penn Central commercial paper?

A Yes.

Q And would you explain what that means?

A The only dealer, the one that sold the commercial paper for Penn Central.

Q And did you ever hear the term "a split account"?

A Yes.

Q What does that mean?

A More than one dealer.

Q That is where a commercial paper issuer has more than one dealer selling its commercial paper?

A Correct.

Q Can you tell me what the terms of Goldman, Sachs' exclusive dealership arrangement with Penn Central was?

A That we would be the sole dealer of their paper.

Q Was there any period of time involved in this arrangement?

A No, it is a word-of-mouth thing. You act as their dealer as long as you do the job, and there is no contracts or anything like that.

THE COURT: Have you been a dealer for either of the constituent railroads that went into Penn Central before the merger?

THE WITNESS: Yes, we had been the dealer for New York Central.

Q And there were no written documents reflecting the exclusive dealer arrangement between Goldman, Sachs and Penn Central?

A That's correct.

Q What was your understanding as to how such an arrangement could be terminated?

A They call up on the telephone and say "We don't need you anymore."

It's as simple as that.

Q What was going to happen with the papers that you had in inventory, if you had it?

A You are asking me a hypothetical question.

THE COURT: Just give an answer you don't know, if you don't know.

THE WITNESS: I don't know what we would have done, and under what amounts had something to do with it. I can't answer that.

Q Mr. Van Cleave, are you aware of any situations in which Goldman, Sachs represented a commercial paper on an exclusive dealership basis on which that arrangement was terminated at the time there was a commercial paper outstanding and in inventory of Goldman, Sachs?

A I'm sure there must have been over the years. I can't recall any specific case.

Q Can you tell me if it was Goldman, Sachs that insisted on being the exclusive dealer of Penn Central commercial paper?

A Yes. That is how most of the paper in the dealer market is handled. You are talking about, in terms of outstandings, 95 percent of commercial paper is handled on an exclusive basis by all the dealers. There are some splits, but very few.

Q This is at the insistence of the dealers, is that correct?

A Yes, at the recommendation of the dealers.

Q Would Goldman, Sachs have handled Penn Central on anything other than an exclusive dealership basis?

A We would not have.

Q What is the purpose for asking for an exclusive arrangement?

A The purpose is that in marketing commercial paper, which is in its way a little bit different than other money-market instruments that you talked about, because it is a primary market, period, there is no secondary market, there is no trading, we had found that it was much more efficient to operate in that manner, to have the sole distribution of the paper because if you were to have paper offered on the East Coast, the Midwest, the West Coast, have that offered at different rates, it could be very confusing to the investing public, they wouldn't know where to go to get the paper.

And it had always been, and all the issuers pretty much all agreed that that is the way the paper business should be handled.

Q Were there any other reasons for which Goldman, Sachs wanted an exclusive dealership arrangement with its commercial paper issuers?

A Well, of course, there is a simple economic fact, you like to have all the business. It is a fact of life.

Q Any other reasons?

A Not that I can recall.

Q Isn't it a fact that if Goldman, Sachs did not have this exclusive arrangement it would lose credit control over the account?

A Could you define credit control for me?

MR. BREINDEL: Show the witness Plaintiff's Exhibit 121.

Q I believe you previously testified to Plaintiff's Exhibit 121, is that correct?

A Yes.

Q And you and Mr. Wilson were the authors of this memorandum?

A Yes.

Q Would you look at the third page of this memorandum?

A Yes.

Q There is a paragraph headed IV, which states, "By permitting split accounts we lose credit control." Is that correct?

A Yes.

Q What did you mean in that memo when you wrote credit control?

A It is common place for us in our working with an account to keep track of their short-term debt, and on a periodical basis, maybe bi-weekly, I'm sorry, bi-monthly or once a month, sometimes more often, we will ask how much is the bank debt of this issuer, and by knowing how much commercial paper is outstanding, because we have it all, we know what their total short-term debt is, we can see any trends, if it is rising, if it is declining, whether or not they have line coverage or not, and if they were to sell through four or five dealers, it might be difficult to ascertain that information because dealer one has 5 million, dealer two, 10 million, et cetera.

And that is what we mean by credit control in this memo.

Q So long as the issuer was your exclusive account you could keep track of its outstanding indebtedness and things like bank lines, is that correct?

A That's correct.

Q By being its exclusive dealer, weren't you also able to have some effect on the controlling of that outstanding indebtedness?

A Controlling? What do you mean by that?

Q The word "control," to have some ability to affect their outstanding indebtedness.

A Well, that was all done by joint decisions with the issuer. We talk about it. Where do we think the outstandings should be. How high do you think we can go?

THE COURT: Let's see if we can focus this a little better.

The first question I'd like to know is whether Goldman, Sachs at any time had any authority with regard to Penn Central's debt, as to how much they could borrow or anything of that kind?

THE WITNESS: If we had?

THE COURT: Any authority. Did you have any legal authority --

THE WITNESS: No.

THE COURT: --to limit the amount of their debt in any way?

THE WITNESS: No, we were told that we could sell up to whatever the ICC approval was.

THE COURT: That was not because of any authority that you exercised but only because the ICC had authorized it, right?

THE WITNESS: Yes.

THE COURT: The next question is this: In your opinion, did Goldman, Sachs, was it able effectively, one way or another, to influence how much commercial paper Penn Central would issue or what bank lines it would use, and so on, what debt it would incur at the banks?

THE WITNESS: Well, I think you are understandably in a position to do that, if you wanted to try to hold down outstandings and just simply say that you couldn't seel it, but the one thing about the exclusive concept which might sound like it is red roses on one side, if you don't darn well do what the client wants to do, they go to Solomon and Lehman, you just look a hundred percent of the business.

THE COURT: It is not entirely a monopolistic business?

THE WITNESS: No, very highly competitive.

Q You just said, I believe, Mr. Van Cleave, that if you don't darn well do what the client wants you to, you lose the business, is that right?

A Yes.

THE COURT: Sometimes when you do what the client wants, you lose the business, too, because the client loses its own business.

Q Are you aware, Mr. Van Cleave, of any occasions on which Goldman Sachs took over the issuance of commercial paper from a competitor?

A Yes, sure.

Q When it took over the issuance of commercial paper from a competitor prior to doing that, did it run a credit check on the issuer?

A We would do the same type of work that we would do on a brand new issuer.

Q So you wouldn't take over existing business until you first run a credit check on the issuer, is that correct?

A That's correct.

Q Approximately how long would that take, Mr. Van Cleave?

A I guess that would really depend upon the type of issuer, the complexity of the situation. I mean it's obvious you are going to take less time to figure out when you do business with AT & T than with the corner drug store, but --

THE COURT: Less time, you say?

THE WITNESS: Yes. I think so.

Q Approximately how long would it take to run a credit check on a company the size of Penn Central?

A You see, these are again credit questions, and you really have got the wrong man. I do not know that.

Q What's your best estimate as to how minimum amount of time it would take to run a credit check on a company the approximate size of Penn Central?

A Frankly, I have no idea.

Q Do you think it could be done in less than a week?

MR. MANEY: I object. This is just a waste of time.

THE COURT: Sustained. It takes six weeks to get a pre-sentence report in this court.

Q Now, Mr. Van Cleave, I believe you testified that on February 9, Goldman, Sachs sold back approximately $9 million of Penn Central commercial paper to Penn Central.

A My memory tells me ten, but I'd have to check the exhibit.

Q At or about February 9 or 10, is that correct?

The exact date isn't important?

A I mean the amount.

Q I believe the amount you testified was 10 million.

A I thought you just said nine.

THE COURT: You did.

Q It was 10 million on February 9, is that correct?

A Is it proper for me to refer to this?

THE COURT: Yes.

A Thank you. Yes.

Q What is the identification of the exhibit you are referring to?

A C.W.

Q And to the best of your recollection, were there any other occasions on which Penn Central had repurchased its own commercial paper from Goldman, Sachs' inventory?

A Yes, as I referred to yesterday, in December, when they did the financing.

THE COURT: When was that?

THE WITNESS: In December.

THE COURT: Of '69 also?

THE WITNESS: Yes, when Pennco did the financing.

Q That was on December 23, 1969?

A December 24, I believe.

Q What date does that exhibit indicate?

A I remember because it was like a Christmas present.

THE COURT: Christmas Eve?

THE WITNESS: Yes, Christmas Eve.

Q And the December 1969 repurchase was at the request of Penn Central, is that correct?

A At the request? I think this was kind of a joint thing, this on-going -- we have a lot of paper in inventory, I mean can you possibly releave us of some of it, and they're saying, yes, when we get the funds from the financing, we will do it.

Q To the best of your recollection, who initiated the December, 1969 repurchase of commercial paper by Penn Central?

A Most of these conversations were done between Wilson and O'Herron.

Q So you don't know?

A No, right, I do not.

Q But you do know that the funds for the December, 1969 repurchase of approximately $16 million came from, I believe, the sale was $50 million debenture by Pennco, is that correct?

A Yes.

Q Bank lines were not involved in that repurchase?

A Not to my knowledge.

Q Did you testify yesterday, Mr. Van Cleave, that in December of 1969 Penn Central paper was selling well?

A May I again refer to this? Yes, I did.

THE COURT: December of '69, is that what you say?

THE WITNESS: Yes.

Q Mr. Van Cleave, I believe yesterday you testified with respect to Defendant's Exhibit BM, is that correct?

A Yes. May I interrupt a second?

Would it be possible for me to have a little water, please?

THE COURT: Sure.

(Pause.)

Q Is Defendant's Exhibit BM a blue sheet?

A No.

Q Can you tell me what the difference between this document is and a blue sheet?

A This is a memorandum on a topic as opposed to a report on a specific company.

Q Do you know why this memorandum is marked "Confidential"?

A No.

Q Did this memorandum go to the credit file of these various issuers listed here the way a blue sheet would go to a credit file of an issuer?

A I don't know.

THE COURT: Are you going to another exhibit at this time?

MR. BREINDEL: Yes.

THE COURT: Let's take the morning recess.

(Recess.)

MR. BREINDEL:

Q Mr. Van Cleave, I believe you testified yesterday that you and Goldman, Sachs worked hard on Penn Central to convince them to go to a tap-issue basis, and you proposed it to them on an experimental basis in January of 1970, is that correct?

A I don't recall that, no.

THE COURT: You mean you don't recall whether it was that date?

THE WITNESS: I don't recall testifying to that, that we were going on a tap-issue on a temporary basis.

Q Do you recall testifying yesterday that you worked hard on Penn Central to get them to go to a tap-issue basis?

A No. What I recall testifying was that we worked very hard to get them to go to work against order and to set up swing lines. That is what I testified to.

Q When was this?

When were you working hard to get them to go to a swing-line basis, special order swing-line basis?

A Late '69, early '70.

Q And by a special order, you mean no inventory, is that correct, paper would be sold on a special order basis and Goldman, Sachs would not inventory it?

A Well, not on a carte blanche, no-inventory; the combination of special order, using swing lines, our inventory, the combination of that.

Q And did you propose this to them on an experimental basis?

A I have trouble with experimental. I'm sorry, I don't recall.

Q Do you recall using that word yesterday, Mr. Van Cleave? It is not my word. I'm using it because my notes indicate you used it.

Do you recall using it yesterday?

A I guess I could have used that in this connection in that we -- I don't recall using it, but I could have, in that we would try this program to see how it worked. Obviously if it didn't work, we would have an unsatisfied client.

Q And did you have any such discussions with Penn Central, that is, try out this program of special order, swing lines; you had such discussions with Penn Central, that you would try out such a program, is that correct?

A Yes, Wilson did.

Q Did you participate in any of those discussions?

A No.

Q With whom did Mr. Wilson have these discussions?

A Most of his discussions were with O'Herron.

Q In the ordinary course of events, if Mr. Wilson had a discussion with Mr. O'Herron about the program we have been discussing, he would write a blue sheet about it, is that correct?

A I don't know.

THE COURT: I'm a little bit concerned about trying to establish a record on the basis of what one person in an organization will say about when another would write a blue sheet.

I don't really think it means very much if he tells me he would or wouldn't. You can ask Mr. O'Herron, if he's going to testify. Is he?

MR. BREINDEL: No.

THE COURT: Or Mr. Wilson. Mr. Wilson would have been the one to write the blue sheet.

MR. BREINDEL: We have his deposition testimony.

Q Again, to the best of your recollection, Mr. Van Cleave, when did these discussions with Penn Central begin?

THE COURT: Which discussions now, the discussions about the possibility of going on this new arrangement?

Q Yes, trying out the new arrangement.

A Again, I give you the same time frame. I cannot give you specifics.

THE COURT: That was what?

THE WITNESS: Late '69, early '70.

Q I believe you testified yesterday that in connection with the repurchase of the 10 million in Penn Central commercial paper by Penn Central on February 9th, you were trying to get Penn Central to follow your advice, is that correct?

A Yes.

Q What was that advice that you were trying to get them to follow?

A Use the swing lines and pay us, take paper from our inventory.

Q And did your advice also include getting bank lines up to a hundred percent?

A That was not what I was referring to, no.

Q I believe you also testified in connection with the $10 million repurchase on February 9th that the Penn Central people were tough negotiators?

A Yes.

Q What do you mean by "tough negotiators"?

A Well, they knew that it would be expensive for them to get additional bank lines, and they had this terrific deal from Goldman, Sachs who was taking the paper in and financing it and taking the losses instead of themselves, and so it was very difficult to negotiate with them, to change that.

Q Well, why was it difficult to negotiate with them, and what leverage did they have to exercise against Goldman, Sachs?

A Five other commercial paper dealers.

Q Is it your opinion, Mr. Van Cleave, that on February 9th, 1970, Penn Central could get a competitive commercial paper dealer to handle their commercial paper?

A No question; the outstandings were back up to 200 million, the notes were starting to sell again, it would have been very easy.

GW

Q And in order to do that, they would first have to have the competitive dealer run a credit check, is that correct?

A I really can't -- you have to ask one of my competitors.

Q But certainly -- withdrawn.

During these tough negotiations with Penn Central, did you ever mention to them that your advice was to be done on an experimental basis, your suggested program was to be done on an experimental basis?

A I don't know.

THE COURT: I take it that when the word "experimental" is used what you seem to mean by it, Mr. Van Cleave, is that you tell somebody "try to see if it works."

THE WITNESS: Yes.

Q Do you have Plaintiff's Exhibit 121 before you?

A Yes, I do.

Q I believe that you testified yesterday, Mr. Van Cleave, as of September 10, 1969, you and Mr. Wilson felt that Goldman, Sachs should be increasing its inventory of commercial paper, is that correct

A That's correct.

Q And that you changed your mind when you realized the magnitude of the losses you were incurring as a result of carrying inventory?

A And also the marking up due to increased interest rates.

Q With respect to the magnitude of the losses from negative carry, when did you first become aware of that?

A We had been aware of -- repeat the question.

MR. BREINDEL: Would you repeat my question, please.

(Question read.)

A Sir, you are asking me when did I become aware of the magnitude?

Q Yes.

A Late '69.

THE COURT: And you are talking about yourself now, is that right?

THE WITNESS: Yes.

Q And how did you become aware of it in late '69?

A As we were going through this study.

Q When was this information first available to you?

A It started filtering in right after we started to work on it in November.

Q And just briefly, describe generally this information that became available to you.

A You have seen quite a bit of it in this trial, the average buying rates versus the average financing rates to determine what the negative carry was.

THE COURT: Did you look at the blue-covered document, I think it is 75? Does that contain specific information as to what your negative losses were?

THE WITNESS: Yes.

THE COURT: Could you compare those to the total profit for the periods in question? I would like to get some feeling of the relative impact of these losses to know total business of the company.

THE WITNESS: The cost of negative carry during this time period I believe is a million three hundred thousand.

THE COURT: And that was what period?

THE WITNESS: September 30, '68, September 30, '69.

THE COURT: A million, three, did you say?

THE WITNESS: One million, three.

And also the cost due to mark up was approximately the same.

THE COURT: So that the total cost of the proposition was about two million, six?

THE WITNESS: Right.

THE COURT: And are there any figures in that exhibit cr anywhere else that you know of that could give me some idea of what Goldman, Sachs' profits were during that period of time?

THE WITNESS: On all business?

THE COURT: Yes.

THE WITNESS: No, your Honor. I was not privy to those numbers.

MR. MANEY: May I call attention to page 2 of that exhibit?

THE WITNESS: He is asking total profit of all of Goldman, Sachs' underwritings.

THE COURT: Tell me what you can.

THE WITNESS: The Commercial Department's net profits I can tell you in 1968, the calendar year, were 268,000 and in 1969 were 435,000.

Q And that's --

A That's on a calendar basis.

Q That is on page 2 of Plaintiff's Exhibit 75?

A Yes.

Q These were net profits after Goldman, Sachs had incurred the expenses of negative carry and mark-ups, is that correct?

A Correct, and before taxes.

THE COURT: What was the last figure in 1969?

THE WITNESS: 435,000.

THE COURT: That '69 figure would have included nine months of the period for the losses, is that right?

THE WITNESS: That's right.

THE COURT: So if I got it straight, in spite of the losses, which were large, or costs which were large, let's call it that, the profit of the Department increased by almost -- well, not 100 percent, but 60 percent, or whatever it is, in '69 over '68?

THE WITNESS: That's correct. If I may just --

THE COURT: When you talk about taxes, taxes of course would not relate to the Department alone?

THE WITNESS: No. If I may just point out, in '69 the average outstanding was just a touch under $5 billion. So you are talking about a gross of six million, two or so.

THE COURT: The outstandings were slightly below five billion?

THE WITNESS: The average for the year.

THE COURT: Then you said something about going to a gross of 6.2 million.

THE WITNESS: $6.2 million.

THE COURT: You mean including your commission?

THE WITNESS: No. What I am saying is for figuration, if you had an average outstanding of $5 billion and assume you made an eighth, which was the intended spread in that paper, you would have a gross income of 6,250,000, and what we were trying to do is get more of that to the net line.

THE COURT: Which is a fancy way of saying to make more of a profit out of that volume of business?

THE WITNESS: Yes, sir.

Q Mr. Van Cleave, you testified, I believe, that during this period you incurred, I think you used the term losses of approximately 1.3 million from the negative carry and losses of approximately 1.3 million from the mark ups, is that correct?

A Yes.

Q And these were not losses, they were expenses, is that correct?

THE COURT: As it had turned out they weren't losses because you made a profit in the Department? I mean by that definition at least they weren't losses.

THE WITNESS: Money was lost to us.

Q You are talking about a loss as contrasted with a profit?

THE WITNESS: It is semantics.

THE COURT: That is a matter of argument. We are all aware that after these costs were charged, there was still a profit.

Q When you wrote this memo, Plaintiff's Exhibit 121, on September 10, 1969, were you aware that prior to that date Goldman, Sachs had been, to use your term, incurring negative carry losses?

A Yes.

Q And were you aware prior to that date that Goldman, Sachs had been incurring mark-up losses?

A Yes.

Q And did you take those factors into consideration when you prepared Plaintiff's Exhibit 121?

A Yes. It was a question of magnitude.

Q You were aware of the fact of losses but not the magnitude, is that correct?

A Yes.

Q Was the information with respect to the magnitude of the losses available to you prior to September 10, 1969?

A Yes, it would have been available in the manner in which we finally I got them. We did a study.

Q The study could have been done and the information in that form could have been made available to you prior to September 10?

A Yes.

THE COURT: How long did it take to secure the information? I take it you couldn't open a drawer and see it?

THE WITNESS: No. You could probably compile that -- if you put someone on it full time within a week's period.

THE COURT: Okay.

Q Can you tell us what it was that caused Goldman, Sachs to have a study made to determine the magnitude of the negative carry losses and the magnitude of the mark-up losses?

A I just need the first few words of your question.

THE COURT: What made you decide to make a study?

THE WITNESS: It was clear that we weren't making any money on the business for the volume of the business involved and there had to be a reason for it.

So we had to sit back and take a hard look at what was going wrong, did the business change and we hadn't, were we operating the way we did years ago, and there had been comments in the partnership from various partners in the firm that the Commercial Paper Department should be more profitable and that's what made us take on the study.

Q You did say that this became clear to the partnership?

When did it become clear to the partnership that it wasn't making enough money on its Commercial Paper

Department?

A In the late sixties. I'd say about '68-'69 period.

Q Was it prior to the time you wrote your September 10, 1969 memorandum?

A Yes.

THE COURT: As I understand it, the memo is addressed to that subject itself?

THE WITNESS: The over-all profitability.

THE COURT: A kind of interim suggestion but it dealt with the subject we are talking about?

THE WITNESS: Right.

Q I believe you testified that these studies were undertaken to ascertain the magnitude of the losses from negative carry and mark-up and they culminated in the blue book which is Plaintiff's Exhibit 75?

A Yes.

Q And I believe it was your testimony that the conclusions which are reported in Plaintiff's Exhibit 75 were known to you in November of 1969, is that correct?

A The conclusions of -- I am sorry. Of all the various models are you talking about, models A, B, C, D? I don't know what you mean.

Q Yesterday you testified, Mr. Van Cleave, that the results, using your words now, the results of the report, Plaintiff's Exhibit 75, were known to you in November of 1969.

A The conclusions.

Q What did you mean when you used the word "results" yesterday?

A What the magnitude of these losses were.

THE COURT: You knew what facts had been discovered?

THE WITNESS: Yes, right.

Q In fact, nad that been reduced to writing by November of 1969?

A Well, we had our work sheets, you know, that we got for the various aspects of the study, and we saw it in the work sheets.

Q And to the best of your knowledge, when was Plaintiff's Exhibit 75 reduced to its final form?

A Sometime in the first quarter. March, I think, of '70.

Q Do you recall whether it was before or after March 13, 1970?

A I do not.

Q I notice on the front page a mailing date of March, 1970.

A That's correct.

Q If you turn to page 1, I notice at the bottom of the page it states "As of March 31, 1970, our outstandings were 5.9 billion."

A I am lost. I am sorry. I can't find it.

Q The first page of text.

A Got it.

Q The very bottom line states: "As of March 31, 1970, our outstandings were 5.9 billion"; is that correct?

A That's correct.

Q As a result of that, it is obvious, is it not, that Plaintiff's Exhibit 75 was not finalized prior to March 31, 1970?

A Well, as I think back, this thing took us a couple of months to put together because, unfortunately, we were all salesmen and there weren't too many buyers. We worked hard on it for a couple of months and my recollection tells me that the basic contents of the report were finished long before then and then as time went on, it took us longer to get this together. We kept bringing things up to date.

Q Wasn't this report in fact prepared for the May, 1970 meeting of the Management Committee?

A It was prepared to present to the Management

Committee whenever they could talk about it. We didn't have any specific target date.

Q Can you identify Plaintiff's Exhibit 76 for us?

A I can.

Q What is it?

A It is a memorandum to Gus Levy from John Whitehead, discussing the blue book report that we made.

THE COURT: Discussing Plaintiff's Exhibit 75?

THE WITNESS: Yes, your Honor.

Q Did you receive it on or about April 28, 1970?

A I am not sure. I know that I have read it during the course of these trials. When I received it, I am not sure.

Q At page 2, Mr. Whitehead states, in commenting on the blue book: "It should be noted at the outset that the report is based on data collected during the period October 1, 1968, to September 30, 1969. This was not a representative period from which to draw conclusions."

Did you agree with that statement?

A No.

Q What was Mr. Whitehead's position at that time?

A Member of the Management Committee, head of the New Business Department.

Q And at page 4 of Plaintiff's Exhibit 76 appears the statement: "Our willingness to take on inventory --"

THE COURT: Where is this now?

MR. BREINDEL: Page 4.

A "Our willingness to take on inventory, to tailor-make maturities to fit the issuer's needs, has been in the past an effective competitive tool in getting and keeping business."

Is that an accurate statement?

A Yes, in the past.

THE COURT: What are you reading now? Excuse me. Would you read back the question and the answer.

(Record read.)

MR. MANEY: May we have the answer re-read?

THE COURT: The answer was yes.

MR. MANEY: He also said, "in the past."

THE COURT: Mr. Van Cleave, isn't it a true statement even for the present, that the willingness of the dealer to take on inventory will be an effective competitive tool in getting and keeping business?

THE WITNESS: What we were trying to show in the report --

THE COURT: It wasn't effective for you anymore but it was effecting in keeping business?

THE WITNESS: What we were trying to show in the report is, "Look, there is another way to do this."

THE COURT: I understand that. As I envision this whole setup, the proposition of keeping the inventory at least in a current position is the advantage in the line is largely, if not exclusively, with the issuer, not with the dealer?

THE WITNESS: Absolutely.

Q Mr. Van Cleave, when Goldman, Sachs was making its determination as to whether or not it would continue to keep a commercial paper inventory, did it take into consideration what position on this point its competitors were taking?

A Not that I can recall.

Q I believe you did testify that when you made your decision on a daily basis as to what interest rate you would charge on commercial paper, you did take into consideration what interest rates your competitors were charging, is that right?

A By "competitors" I meant the direct issuers, who do not inventory paper. They just market everything they have.

Q By "competitors", you were not referring to other dealers of commercial paper?

A No. I felt that as the largest dealer we should lead the market and sometimes we had to change our rates because of competition, but I felt that was our role in the business.

Q When you testified just now "sometimes because of competition we had to change our rates," are you referring to other dealers of commercial paper or other short-term money marketers?

A It is all-encompassing. Let's first take the direct issuers and then the other securities and then probably last of all the competitors.

Q During the period from 1969 to the first quarter of '70, when you made the determination in the morning as to what interest rate you were going to charge on the commercial paper, you were handling, did you take into consideration the interest charges by other dealers of commercial paper?

A No, because we weren't able to collect that information until ten or 10:30, so I didn't know what they were.

MR. PREINDEL: No further questions, your Honor.

xx REDIRECT EXAMINATION

BY MR. MANEY:

Q Mr. Van Cleave, do you have Exhibit CW in front of you?

A Yes.

Q You were asked questions about would you agree with Mr. Wilson's prediction about what would happen after the 1969 results were announced in February, 1970.

A Yes.

Q Can you tell from Exhibit CW exactly what did happen?

A Yes, I can.

Q What did happen?

A Actually, our outstandings moved back up to the $200 million level. The company -- we returned that 10 million which went for the swing lines, borrow the money in the swing lines, and then our outstandings remained fairly constant and our inventory reduced, which tells us that sales were made.

THE COURT: Tells you what?

THE WITNESS: That sales were being made.

A And those outstandings then continued to increase until they got almost up to the $200 million level again by the first part of March.

Q I believe you also were asked questions concerning when, to your knowledge, Penn Central --

THE COURT: Let me ask, what do you consider to be the significance of that?

THE WITNESS: Well, Wilson had said to O'Herron, you know, "You had better get 100 percent line coverage because you can have a 50 million run-off" and we did.

Q I believe you were also asked in addition about Penn Central's ability to draw down on the bank line?

A Yes, I was.

Q May I ask you this question: If Penn Central had commercial paper outstanding of $200 million, was it your understanding Penn Central could still draw down on the $100 million of the backup line?

A No.

Q What was your understanding in that regard?

A That the total short-term debt as authorized by the ICC was 200 million no matter which form it would take. So, therefore, if they had $200 million in paper there was no more additional short-term debt authorized.

Q I call your attention to March -- I was going to say March 8. Let's take March 13.

Can you tell from looking at the outstandings on Exhibit CW what was the total amount that Penn Central could borrow in its swing lines on that date?

THE COURT: What date?

MR. MANEY: March 13.

A 1,525,000.

Q What happened to the borrowings in February to purchase $10 million in commercial paper from Goldman, Sachs?

A I am sorry. I don't understand. What do you mean by the borrowings?

Q I believe you testified that Penn Central used its swing lines in February to take back the $10 million from inventory?

A Yes.

Q What happened to that borrowing?

A There was owed 10 million in the swing lines and 190 million in paper. So you had the combined --

Q On March 13 what happened?

A What had happened then is the swing line had been reduced.

THE COURT: From what?

THE WITNESS: From the $10 million to one million one twenty-five.

THE COURT: Is the point we are all trying to bring out that one item offsets the other and if you increase one you reduce the other and vice versa?

THE WITNESS: That's right.

MR. MANEY: No further questions.

xx RECROSS EXAMINATION

BY MR. BREINDEL:

Q Mr. Van Cleave, I believe you testified that although Mr. Wilson had discussed the possibility of a drop in outstandings of 50 to a hundred million if Penn Central didn't get its bank lines up to 100 percent, there was no such drop, is that correct?

A Wait a minute. Can I have that again?

(Question read.)

A That's correct.

Q And there was no such drop during the period from February 5th or 6th when Mr. Wilson stated it until through March of 1970, is that correct?

A May I refer to CW?

THE COURT: Sure.

A That's correct.

Q It is not correct, Mr. Van Cleave, on March 23, 1970, Mr. Wilson requested of Mr. O'Herron that Penn Central-- again requested Penn Central increase its bank lines to 100 percent coverage?

MR. MANEY: Objection. Irrelevant. After the date of purchase in this case.

THE COURT: What do you consider to be the relevance of that question?

MR. BREINDEL: I consider it to be relevant, your Honor, to show that at least in Goldman Sachs' mind the 100 percent line coverage was material and important for a commercial paper issuer.

THE COURT: I will allow it. I don't think it adds very much. It is the same man asking the same thing again. History had not been frozen at that point, I agree.

Did he make a recommendation again on March 23?

THE WITNESS: I don't know.

THE COURT: What an anti-climax.

Q Does Plaintiff's Exhibit 14, a blue sheet dated March 23, 1970, refresh your recollection?

A Yes.

Q What is your recollection?

A That Wilson had again requested a hundred percent line coverage.

Q Are you familiar with Plaintiff's Exhibit 116, Mr. Van Cleave?

A Yes.

Q Would you look at page 3, in particular paragraphs 2 and 3?

A I have a one-page document.

THE COURT: So do I. It is a letter from someone to Mr. O'Herron.

MR. BREINDEL: I'm sorry. Plaintiff's Exhibit 67, it was marked 116 in another deposition.

THE COURT: Then you are not interested in 116?

MR. BREINDEL: No.

THE COURT: Now we are talking about something dated October 1, '69 from the files of the ICC.

MR. BREINDEL: Yes, your Honor.

THE WITNESS: I must have the question again, I'm sorry.

MR. MANEY: Your Honor, I must object. Under Rule 611, this is completely outside the scope of redirect.

THE COURT: I can't tell till I hear the question. There was practically no redirect. I don't quite understand what --

MR. BREINDEL: I can resolve this rather quickly, your Honor. If you think paragraph 3 on page 3 is beyond the scope of redirect, I will cease.

THE COURT: Page 3, paragraph 3. Let me see.

Well, I guess it is on the same subject anyway. All right.

Q Are you familiar with Plaintiff's Exhibit 67, Mr. Van Cleave?

A I am not.

Q Never seen it before?

A No, I have not.

Q Do you recall whether you ever discussed it with Mr. Wilson or anyone else, or its contents?

A I do not.

MR. BREINDEL: No further questions.

THE COURT: Thank you, Mr. Van Cleave.

(Witness excused.)

MR. MANEY: Defendant calls Jack Vogel.

JACK A. VOGEL, called as a witness on behalf of the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MANEY:

Q Mr. Vogel, are you employed by Goldman, Sachs and Company?

A Yes, sir, I am.

Q Were you during the period 1968, '69 and at least through the first quarter of 1970?

A Yes, I was.

Q Would you briefly state your professional and educational background?

A I graduated from Rider College in Trenton, New Jersey with a Bachelor of Science Degree, a major in Journalism and a minor in Business Administration.

Immediately upon leaving college, I was employed by the Grace National Bank of New York for approximately ten years, last part of which I was the head of the Domestic Division of the Commercial Credit Department, and Alternate

Secretary to the Senior Loan Committee or Discount Committee of the bank.

Approximately 1962, I left the Grace National Bank to become employed by the Goldman, Sachs and Company and have been there ever since.

Q What were your functions at Grace National Bank?

A Well, as head of the Domestic Division, I was responsible for the supervision of and preparation of credit analysis as they related to the bank's loan customer's presentations to the Senior Loan Committee, setting up the agenda, for example.

Also in terms of making credit investigations for these borrowing customers with other lenders, such as other banks. Also reporting our views, the Grace National Bank's views on depositors, whether they be loan customers or not of the bank, to other creditors who were asking our opinions.

THE COURT: You said Grace National Bank. I think you meant Goldman, Sachs.

THE WITNESS: No, I think he's referring to Grace.

THE COURT: Are you referring to the Grace National Bank?

MR. MANEY: I was asking functions at Grace National Bank.

THE COURT: Excuse me, I misunderstood you.

Q Did your duties have anything to do with commercial papers?

A Yes, after. In fact, it was one of the first assignments I got at the bank. After a period of training, I was responsible for analyzing those companies that our Trust Department, for example, bought commercial paper from Goldman, Sachs and other dealers, analyzing the information that we either had on files or were supplied to us by the dealers; coming up with a conclusion as to whether or not that was a proper investment for the bank.

Q What were the sources that you used in reaching that decision?

A Our credit files, which normally contained annual reports and various other data, we had statistical manuals that we utilized for background data and so forth.

Q What do you mean by "statistical manuals"?

A Well, Moody's, for example, has manuals on public companies which carry background data going back for many, many, many, many years, so to the extent that that data was not available in a regular credit file, I referred to Moody's.

Q Did you take any post-graduate courses while you were at Grace Bank?

A Yes. I took some accounting courses and also some corporate finance courses at the Graduate School of NYU. I took a number of courses at the American Institute of Banking. And I also participated in a seminar conducted by a professor from Harvard Business School at the Chemical Bank for junior officers of various banks in the City.

Q You said 1962 you went to Goldman, Sachs, I think?

A Yes.

Q Please describe briefly your occupational duties and functions at Goldman, Sachs from 1962 through 1969?

A Well, I was hired by Goldman, Sachs to manage the Credit Department, and I continued as a manager clear through and I am now Vice President in Charge, and my duties were to supervise, coordinate the activities of all of the members of the Credit Department.

Q At all times you were the head of the Credit Department?

A Yes, sir.

Q Mr. Vogel, are you a member of any professional organizations?

A Yes, I am now and had been a member for quite some time of the Robert Morris Associates, which is an association of bank loan and credit officers on the policy-making level, a national association. There is a chapter in

New York and other major cities.

Q We have already had some explanation through an organizational chart; I show you Exhibit BN, the second page of that.

Could you briefly explain the structure of the Credit Department and, Mr. Vogel, all of my questions, unless I specify otherwise, will deal with the period 1968, 1969 and up through March 13, 1970.

A Yes, sir.

The Credit Department, as it relates to the left side of the chart?

Q How was it organized during that period?

A I was the manager of the Credit Department. I reported directly to Robert G. Wilson, who was the partner in charge of the Commercial Paper Department. Under me, as manager of the Credit Department, was Walter Fekula.

During that period, Walter Fekula was in the office space that we said was the Credit Department.

Q Where was that located?

A That was on the sixth floor of the building.

We were on the fifth floor.

Q "We" being whom?

A Bob Wilson and myself, about a three-minute hop, skip and jump to get where the Credit Department was.

Walter, on the scene in the Credit Department, so to speak, as being more senior than some of our other analysts that we had up there, would coordinate on a day-by-day basis the par selling out of assignments, the material coming into the Credit Department from, say, the library, he would do it to the various analysts responsible for that particular issuing client, and act sort of as a day-by-day supervisor of the personnel up in the Credit Department, including typists and statistical typists and so forth.

Under Walter were what we term analysts. In this case it was Charles O'Donnell, Robert Hoffman, Olive Tully and Michael Evans, and during that period they had an allocation, an alphabetical allocation of our issuers and they would be responsible on a day-by-day basis for maintaining, updating the credit files and keeping me informed as to the general run of information coming into the Department and in terms of what their views were about it.

That essentially is the make up.

In addition to the analytical aspect of their performance, they also were instrumental in the preparation of yellow sheets, white sheets and green sheets, which was the material that we distributed to investors in the commercial paper of a particular issuer; for example, the yellow sheet was a --

Q I asked what the structure was of the Department.

A I'm sorry.

Q Incidentally, on those four persons you gave us the names of as credit analysts, were all four of them employed by Goldman, Sachs in March 1970?

A I am not certain, but I believe Evans had left us prior to March.

Q Now, would you tell me what duties, additional to those you already explained, a credit analyst had during this period, 1968 through '70?

A During this context.

Well, he was responsible for two things: One, the analytical aspect of the information coming into our Credit Department from the various sources that we had, newspapers and our library, or information directly from an issuer, wherever the course.

He'd see that that was compiled into the credit file. He would make an analysis of it, or he would report that analysis or report the existence of that piece of information, or send me the file, if he felt that I should be seeing the file, and having that piece in terms of the total file.

Once a year or more often, depending, but once a year we would write what we termed an annual credit review of a particular issuer. Basically, it was related to the annual report of a particular issuer. And he would give me what his views are in terms of a trend analysis, meaning that as he views the company over a period of years, their profits were going up or their profits were going down, or their debt was going up or their debt was going down, and this was the trend of that particular item over a period of X number of years.

Q Mr. Vogel, are you explaining the duties of the credit analyst with respect to an existing issuer?

A Right.

Q Did the credit analyst have any function with respect to prospective issuers, call it that?

A Yes. Yes, among other things, he had the responsibility -- again, I talked about the credit file earlier -- it was his job to see that that file would eventually become a complete file prior to an issuance, so he had to follow the physical making, make sure it was all compiled, put into a credit file, so forth, if we didn't have an existing credit file, all the separate pieces of information.

He would be instrumental, from time to time, of listing what we called those documents and other materials "we would need" in order to bring our files up to date; maybe send that to me or send it to Bob Wilson, or whoever happened to be in direct contact with the management of the company at that time.

Q Did that list have a name?

A We still call it "we needs".

Q We needs?

A Yes. He would, if he chose, or if he felt --

MR. ATLAS: Objection. I don't think there is a question pending.

THE COURT: He's continuing the answer.

MR. MANEY: Your Honor, is there going to be one lawyer or more than one lawyer with respect to Mr. Vogel's examination?

I'm perfectly happy, if we stick with Mr. Atlas.

MR. ATLAS: With respect to Mr. Vogel, with your Honor's consent, I'd like to handle the cross examination.

THE COURT: All right.

MR. MANEY: That's fine.

THE COURT: I thought the answer was a continuing answer, was it not, Mr. Vogel?

THE WITNESS: I believe so.

THE COURT: Go ahead.

A He would again, utilizing this -- we have for each issuer what we term a spread sheet, and he would physically post the relative components of the balance sheet, the income statement, and so forth, on this spread sheet, labeled December 31, so and so out, for a period of years. If he chose to make a, for example, written analysis and submit it to me in terms of what our attitude should be as to whether we want to take it on as an issuer or not, he would. If he felt that he could handle that by just picking up the telephone and saying, "Jack, I have some reservations about this particular company and this is what they are," he would or could.

THE COURT: Just let me get to that for a moment. We are talking about credit analysts?

THE WITNESS: Right.

THE COURT: A credit analyst, in effect, at least, had limited authority or you could say the authority to recommend the acceptance, or non-acceptance of a proposed issuer?

THE WITNESS: To recommend it, yes.

His degree of involvement in the original, in a new issuer, to a large extent depended upon how I sort of looked at that issuer. If I felt it was a particularly complex situation, that his level of experience might not be enough for him to have to cope with all these complexities, then I would do probably anywheres from 90 to a hundred percent of the preliminary analysis on a new issuer. If I felt it was one that was -- in fact, I did a preliminary analysis on every issuer.

If I felt it was one that he could safely handle in total or at least to a large extent the majority of the work involved, I'd let them do it and then subject to whatever their conclusions are, as they relate to what my conclusions were on the same, based on the same data, we would even take the account on or not take the account on.

THE COURT: I take it you are distinguishing -- there is a distinction between taking on a new issuer, on the one hand, and taking on some new paper that he's issuing for an existing issuer?

THE WITNESS: From the point of view of the analysis, the initial analysis embodies going back into history and background and so forth, what we term as the ongoing analysis, his job was to stay on top of that issuer and he'd be posted on events, this day's to the next day's, to the following day's, keep the file up to date.

Q Do you remember if there was an analyst assigned to Penn Central prior to its being taken on as an issuer?

A I'm certain there was.

Q Do you remember who that was?

A I cannot recall who it was.

Q Do you recall whether you did anything in connection with the initial investigation of Penn Central?

A I did practically all of the initial investigation of Penn Central.

THE COURT: By that you mean immediately after the merger or when?

THE WITNESS: Well, it actually goes back further than that, your Honor. We had a relationship with New York Central and I think we had been over a period of years soliciting not only the New York Central, but the Pennsylvania Railroad in one form or another, so we had files on both railroads.

THE COURT: Mr. Van Cleave gave me some information about this, but we didn't press him very hard on it.

He said Goldman, Sachs had represented New York Central. That is the word he used.

THE WITNESS: Yes.

THE COURT: I gather that you had not been a dealer, on a regular basis, anyway, for the Pennsylvania Railroad, is that right?

THE WITNESS: No, not as a dealer, no. The New York Central.

THE COURT: Did you become a dealer for Penn Central, that is, the merged company, immediately upon the merger or how long after the merger, if it wasn't immediately?

THE WITNESS: No, the combined railroad, the Penn Central Railroad we took on the summer of 1968, I believe.

THE COURT: When was the merger?

MR. MANEY: The stipulation, your Honor, is February 1, 1968.

THE COURT: I see.

So it was a few months after the merger?

THE WITNESS: Yes, sir.

THE COURT: And did you do a new analysis of the credit status of the merged railroad in the summer of '68 when they became your customers?

THE WITNESS: We did a -- if I can go back, your Honor -- continuing analysis. The concept of them being our issuers or our customers, so to speak, was way back in the fall of 1967, so our analysis started then, and we just kept building a file and our information on it.

BY MR. MANEY:

Q I think you said you did most of the work on Penn Central yourself?

A Yes, sir.

Q Why was that?

A First of all, it was a huge combination of two railroads. For a period of three or four or five years, there had been a lot of court actions and whatever, relative to the merger of the two railroads. The combined railroad, for example, had no track record of earnings which you know people look to in terms of credit analysis.

The constituent railroads, both of the railroads in the past really never did make a heck of a lot of money out of their railroad operations per se; basically it came from non-railroad type of operations.

And I just felt, given all of these factors, that that type of company required my level of experience to handle what I thought to be a Goldman, Sachs matter.

THE COURT: Were you concerned with such matters-- just to get the feel of what your work was -- for example, as the claims of New Haven Railroad in the total situation, and so on?

THE WITNESS: Yes, sir.

As a matter of fact, as I recall, as part of that merger, the Penn Central at that time had to contribute some cash to the New Haven, yes, sir.

THE COURT: All right.

Q Mr. Vogel, what was the function of the Credit Department?

A Function of Goldman, Sachs' Credit Department?

Q Yes.

A The primary function in terms of the overall Credit Department was that we would pass on or do the analysis in connection with the decision-making as to whether or not Goldman, Sachs would want to buy the commercial paper of a particular issuer; whether it be a new one or an existing one.

Our secondary function is include the analysis that went into that decision and also the preparation of what we termed to be information that we would send to investors in that particular paper.

Q Did the Credit Department have any function with respect to investors?

A Yes. Its responsibility was to prepare what we termed to be a yellow sheet which was -- it was once annually, and that gave the investor a description of the company and its then-decedent, in this case, the two railroads, and so forth; also a background as to the type of operation, and how long the companies had been in business; also a summary of their balance sheet as of the most recent fiscal year-end; a track record of three years of earnings of the particular issuer and a listing of bank references so that if an investor chose to make his own investigation he had other lenders other than ourselves to ask opinions of and so forth.

THE COURT: Which color sheet was this?

THE WITNESS: This was the yellow information sheet we call it.

THE COURT: To whom did this go?

THE WITNESS: This went to investors in the commercial paper of Goldman, Sachs issuers. In addition to the yellow sheet we also prepared what we term white sheets, and those white sheets were essentially an exact duplicate of the financial statements appearing in the annual reports of a particular issuer.

I mean, the balance sheet and the profit and loss statement, surplus, accountant's certificate and so forth.

And then from time to time, during the year we would prepare what we termed to be green sheets in which we would mention things like a bond deal or some other circumstance during the year which we felt would have some public relations value with the investor.

Q Did you perform any other function with respect to investors?

A Well, Goldman, Sachs at all times stood ready to answer questions from investors and did from time to time. And from time to time, for example, in sending out this information, in the normal course of events, it would be sent out with the confirmation of a particular purchase on a particular day.

Some of the major investors, for example, like the Prudential Life Insurance, some of the banks, major money center banks, would ask for, and we would supply them, with this type of information in advance so they had an approved list, set up a list of companies, and they'd use some of that data in establishing whether they wanted to contact the approved list or not.

THE COURT: Did they ask for the yellow sheets?

THE WITNESS: Yellow sheets, white sheets, whatever other data we published at that point.

Q They were performing the same function you did at Grace National Bank?

MR. ATLAS: Objection, your Honor, leading the witness.

THE COURT: "They" meaning who?

MR. MANEY: I will withdraw the question.

Q Now, in performing an initial credit investigation, let's talk about Penn Central. What did you do?

A What did I do personally?

We had, as I mentioned earlier, numerous sources of data. We had, for example, the statistical manuals which gave me background data, for example, on the two other railroads, as well as our files on both, our credit files on both Pennsylvania Railroad and the New York Central Railroad, which had been an issuer.

We have library files which basically are a catch basin for all public-type of data released either by the company or other brokerage houses might have written reports on the company or whatever, that sort of thing, annual reports going back ten years, even copies of indentures, particularly if we were a party to that particular syndicate.

I'd review -- in the case of the railroad, we had an application to the ICC for permission to issue the paper, and their approval of such, and that was part of the information I utilized in my review. The sum total of all of these sources, annual reports, both of the constituent railroads and also the one that was issued in terms of the merged railroad, covering 1967, December 31, put those all together, reviewed the railroad in terms of its assets, in terms of its -- they had, of course, the Pennsylvania Company, which, of course, is a very profitable subsidiary; they had a number of other profitable subsidiaries, and a number of security holdings, all of which gave me a great deal of confidence that they had the sources of, internal sources of financing necessary to meet any commercial paper obligation.

Q Do you have a word to designate the conclusion that a company has the capacity to meet commercial paper obligation?

A Yes. It is a creditworthy company.

Q Creditworthy?

A Yes, sir.

Q Did you reach a conclusion with respect to the initial investigation of Penn Central?

A Yes, I did.

Q What was that conclusion?

A That it was creditworthy.

Q When did you reach that conclusion?

A I had that conclusion prior to our issuing the paper and right through the period we did issue it.

THE COURT: Well, when would you say that you reached the conclusion that your original view had been verified?

THE WITNESS: Sometime in the late -- just prior to our issuing the paper, sometime in July '68.

THE COURT: When was that, July '68?

THE WITNESS: Yes.

Q In the normal course of your duties, if you perform an initial credit investigation and you have some doubt as to the creditworthiness of the company, what do you do?

A Some doubt?

Q Yes.

A Well, I would immediately go to Bob Wilson and tell him of my doubts, and we wouldn't buy the paper.

Q You wouldn't take on the issuer?

A No, we would not.

THE COURT: The two of you decided that?

THE WITNESS: He has the ultimate decision, your Honor.

All I'm saying is if I went in and said I had a doubt upon it, in all the years I have worked with him, he's never countermanded anything I've said.

THE COURT: There is plenty of business with creditworthy people, is there?

THE WITNESS: We had a lot of creditworthy customers, and we also had some that we turned down.

Q Did you ever turn down companies as prospective issuers of commercial paper which had other business relationships with Goldman, Sachs?

A Yes, we did.

Q Did you ever stop handling the commercial paper of an issuer for credit reasons which had other business relationships with Goldman, Sachs?

A Yes, we did.

Q Can you think of any examples?

A The one that I have the best recollection of is General Cigar, which had been one of our oldest investment banking clients, and in addition to that, Mr. Sidney Weinberg, who was our senior partner, had been on their Board for a number of years.

THE COURT: I want you to know in 1950 I ran for Congress, and Mr. Sidney Weinberg made a $25 contribution to my campaign.

THE WITNESS: Wasn't easy to say no to a company he was that interested in.

THE COURT: He was on the Board?

THE WITNESS: Yes, he was on the Board, oldest investment client, lot of emotion involved in that one.

THE COURT: Mr. Sidney Weinberg was on the Board of General Cigar some years ago, but they turned General Cigar down for commercial paper or what?

THE WITNESS: For commercial paper, yes, sir.

They had been issuing, and we felt their condition had reached a point where it was not an acceptable commercial paper risk.

THE COURT: Before they were taken over by Philip Morris or after?

THE WITNESS: I think they're still operating independently.

THE COURT: Are they?

THE WITNESS: Yes.

Q Mr. Vogel, did you read any blue sheets in connection with your initial credit investigation of Penn Central?

A Yes, sir.

Q Which ones did you read?

A Whatever would have been in the file as of the day before, for example, we issued the paper in July 1968 or whenever that day happened to be.

Q I show you Exhibit A in evidence, and ask if this is the file to which you just made reference?

A Yes, sir, this is the credit file of Penn Central.

Q Did you use anything else in connection with your credit investigation besides the information in the file, Exhibit A?

A Yes. As I mentioned, I reviewed the statistical manuals that were in existence at that point of time on the two constituent railroads for background data and so forth. In addition to that, the library file for whatever information was contained in that that I thought was relevant.

THE COURT: You mean the Goldman, Sachs library?

THE WITNESS: Yes, the public files.

Q I show you Exhibit AM-1 for identification and ask you if you can tell me what that is?

A That's Moody's Transportation Manual. This is the annual manual. It is put out once a year. It is for September, 1967.

Q When was that operative?

A They publish in September and we sometimes get it October, November. I am not quite sure.

Q Was that superseded at some later date?

A Yes. Each year there is an annual manual published, and then in between the annual manuals they update it twice a week.

Q Did you use AM-1 for identification in connection with your initial credit investigation of Penn Central?

A Yes, I did.

THE COURT: Can I see it? Would you find the Penn Central information for me? Is it in various places?

THE WITNESS: They have the Penn Central and the two constituent runoffs.

Here is Pennsylvania Railroad Company. That is 340. New York Central.

THE COURT: Just show me one. I would like to get a feel of it. Is there a kind of article on the issuer or what?

THE WITNESS" Pennsylvania Railroad Company, 340. It has ten years' earnings--

THE COURT: Page 340?

THE WITNESS: Yes. (Handing). There it is. It has maps of all the territories. If you just finger the pages, they get into the financial data, ratios and so forth.

THE COURT: There is one subhead here marked "Motive Power", which I thought might have to do with the drive or force of the management or something, but it seems to have something to do with the kind of railroad engines.

THE WITNESS: It gives you a wealth of data.

Q Mr. Vogel, you had been in credit work for about 16 years at the time of the Spring of 1968 credit analysis investigation.

A I have been involved in credit work from the time I graduated college in 1952 until the Spring of '68.

Q At the time you performed that initial credit investigation of Penn Central, to your knowledge, was Moody's Transportation Manual a reference work generally used and relied upon by persons in the credit field?

A Yes, sir.

Q Did you thereafter participate in the on-going credit investigation of Penn Central?

A Yes, sir.

Q I show you Exhibit AM-2 for identification and ask you what that is?

A That's Moody's Transportation Manual, the annual manual again that is put out once a year, the publication dated September, 1968.

Q And for what period of time was that used by you?

A Until the next one came out in September of 1969, or October.

Q And you used AM-2 as a reference book that year?

A Yes.

Q I show you AM-3 for identification. Is that Moody's Maual for 1969?

A Yes.

Q Was that used by you after you received it, at least to March 13, 1970?

A Yes, along with the bi-weekly updates.

Q Bi-weekly updates?

A Yes.

Q Twice a week?

A Yes.

Q Let me show you Exhibit AM-4 for identification and ask if that's one of the bi-weekly updates?

A Yes, sir.

Q Looking at Exhibit AM-4 specifically, do you recall whether you consulted that particular update?

A Yes, I did.

Q That is dated March 6, 1970?

A Yes. This had earnings of the Pittsburgh and Lake Erie Railroad Company. It was one of the companies I followed.

THE COURT: May I see it when you have finished?

THE WITNESS: Yes. (Handing)

MR. MANEY: I offer Exhibits AM-1, 2, 3 and 4 in evidence.

MR. ATLAS: May I have one brief question here?

THE COURT: Yes. With respect to AM-4?

MR. ATLAS: With respect to all of them.

xx VOIR DIRE EXAMINATION

BY MR. ATLAS:

Q Do you know whether any of the credit analysts that were following Penn Central in fact used any of these materials in their credit investigation?

A By any of these materials, you mean all-encompassing? At one time I am sure they did. I don't know for a fact, but that was part of their job.

THE COURT: I suppose you didn't sit down and watch their work?

THE WITNESS: That's right. That would have been part of their function.

Q You assume they did?

A Yes, sir.

MR. ATLAS: No objection, your Honor.

(Defendant's Exhibits AM-1, 2, 3, and 4 received in evidence.)

THE COURT: Is this AM-4 the total update for that week or for that day?

THE WITNESS: I believe it is only one of the two, your Honor.

THE COURT: Were they normally one sheet or two sheets?

THE WITNESS: Usually more than one. It depends how much data came out that week.

THE COURT: Does this purport to be an entire update?

MR. MANEY: It's a looseleaf update, your Honor, that may relate to different companies. This is just the one that relates to one of the Penn Central Companies.

THE COURT: Thank you.

MR. MANEY: As far as the other exhibits, we would not expect it to be read other than call the Court's attention.

THE COURT: Good.

Q Did you prepare a written report of the results of your initial credit investigation of Penn Central?

A No, I did not.

Q Did you communicate the results of your initial credit investigation?

A Yes, sir.

Q To whom?

A Bob Wilson.

Q Did you from time to time communicate with Mr. Wilson with respect to credit matters during this period?

A Oh, yes.

Q Did you communicate by written memorandum?

A Sometimes, and sometimes not. Mostly not.

Q Did persons reporting to you communicate to you from time to time?

A Yes, sir.

Q Did they communicate to you by written memoranda?

A Sometimes, and sometimes not.

Q What was the general practice, if there was one?

A I would say by and large it was not written other than the annual reviews that were submitted. Those were written.

Q Based on the information that you reviewed, on what basis did you conclude that Penn Central was creditworthy?

A On what basis?

Q Yes.

A By analysis of all the material that I referred to earlier indicated to me Penn Central had the wherewithal to meet their upcoming obligations, and so I concluded it was creditworthy.

Q What was this wherewithal they had?

A Again, we are talking about a railroad that had total assets somewhere in the neighborhood of $6 billion worth of assets on their balance sheet, a net worth of approximately, as I recall it, 3 billion, investments in companies, for example, like the Pennsylvania Company, which in turn had investments in a number of companies, Buckeye Pipe Line, Arvida, Great Southwest. They had a lot of stock in the Norfolk and Western Railroad. They had a couple of small railroads, D.T. & I., as I recall, was one. The Penn Central Company itself also had investments in the Pittsburgh and Lake Erie. They had what I consider to be a substantial amount of real estate. There are reports about real estate being developed in Washington and we all know about the New York real estate, Madison Square Garden and the hotels they owned and so forth.

So that I felt that their real estate had a substantial value unrelated to the existing investments.

So given a combination of all those factors, among other things they had just arranged $100 million worth of bank credit and some stand-by lines, $50 million worth of stand-by lines to cover the paper, that they had sufficient wherewithal, alternate sources of cash, if you will, to meet their on-going obligations in the foreseeable future.

THE COURT: I think this is a good time to stop for lunch.

Be back at 2 o'clock, gentlemen.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

xx JACK A. VOGEL, resumed.

xx DIRECT EXAMINATION

BY MR. MANEY: (Continued)

Q Mr. Vogel, just before the lunch recess, I believe you mentioned you looked at the consolidated figures of the Penn Central, is that right?

A Yes, as well as the loan figures.

Q Why did you look at the consolidated figures?

A Well, it represented the totality of the Penn Central complex.

THE COURT: That was the new issuer, wasn't it?

THE WITNESS: Yes.

THE COURT: I don't mean to cut you short. I mean, if you want to get something more on the record, fine. I understand why he did. I can't imagine him doing otherwise.

Q You also referred to the real estate. Was that real estate unencumbered?

A I'm sure a good part of it was encumbered. I was making estimates of what the value of that would be over and above encumbrances.

Q Were you valuing profits of the Penn Central?

A Yes.

THE COURT: In relation to real estate, Mr. Vogel, and other things, too, I suppose, but real estate provokes the question in my mind, what was the weight that you attached to the liquidity when you come to a credit analysis having in mind commercial paper?

It doesn't do an awful lot of good to have real estate if it's unexplored gold mines in South Africa, for example.

THE WITNESS: I understand. What I was doing, in all of their, for example, annual reports they had various developments underway, which were being expanded; in Washington they were building something; they had real estate in Pittsburgh and in Philadelphia and other places, and there were substantial numbers --

THE COURT: Revenue producing?

THE WITNESS: Revenue producing.

THE COURT: And hotels?

THE WITNESS: I didn't consider the hotels uptown because they were so mixed up with the New Haven whatnot position.

THE COURT: Anyway, I used that as an example of revenue producing even though in this instance it had problems.

THE WITNESS: They were selling, for example, all along their right-of-way properties for industrial park developments and so forth.

THE COURT: If I understand you, you don't disagree that liquidity is an important factor or cash-generated faculities is an important characteristic. You are just saying that even with regard to real estate, you were looking at its cash generator, is that right?

THE WITNESS: As the possible cash generator.

THE COURT: If necessary.

THE WITNESS: If necessary.

THE COURT: I understand you were not looking to it to pay the notes.

THE WITNESS: No, it was one of many.

Q Just to be sure we are clear on this one matter: You were looking at Penn Central Company and consolidated subsidiaries?

A Yes, and Penn Central Company alone figures.

Q Just out of sequence --

A That was the borrower, Penn Central alone.

Q Stepping out of sequence just for a minute, at the time that the company started issuing commercial paper, this merged railroad, what was the name of it at that time?

A Penn Central Company.

Q Did there come a time when it changed its name?

A Yes.

Q When was that?

A In the Fall of 1969 it became Penn Central Transportation Company.

Q Was there another company that took the name Penn Central Company at that time?

A Yes, there was a new holding company formed which owned all of the shares of Penn Central Transportation Company which had been the prior Penn Central Company.

THE COURT: You mean the Penn Central Transportation Company had been the prior Penn Central Company?

THE WITNESS: Previous Penn Central Company, yes.

THE COURT: You made a credit analysis not only of the annual issuer, which you did do, but also of the, I don't know what we call it --

THE WITNESS: Total complex.

THE COURT: Complex?

THE WITNESS: Yes, sir.

Q What were some of the assets which you valued at the time of your credit investigation?

A They changed from time to time as we became aware of new assets via various documents that came to my attention.

Q Then let me ask -- I will ask you at a later time specific assets -- but can you give us categories of assets?

A Yes.

There was the real estate that we have just discussed. There were investments both in the railroad and both in various companies, like the Pennsylvania Co. There were investments that the Pennsylvania Co. itself owned in various subsidiaries, stock holdings. Some of the companies, for example, were publicly-traded companies, like Norfolk and Western Railroad, and Great Southwest and Arvida and others.

Some companies, for example, were a hundred percent or non-publicly traded companies, which I tried to look at from the viewpoint of earnings, and then capitalize those earnings at ten times to come up with what I thought to be a reasonable valuation of that asset.

Q Let me back up a second. How did you value the publicly-traded companies?

A The number of shares that either Pennsylvania Co. or Penn Central Company owned times the public value, the market value of the stock, whether it be over the counter or on the exchanges.

Q Did you make that valuation from time to time?

A Yes.

Q And where did you obtain the market values?

A Either in the Wall Street Journal or The New York Times or the pink sheets or sometimes directly from the traders.

Q Let me show you Exhibit DN for identification -- my mistake, Exhibit DO for identification -- I will do both at once -- DN, DO.

Can you tell me what those documents are, Mr. Vogel?

A This is --

THE COURT: Which one are you referring to?

THE WITNESS: DN; this is the Daily Stock Price Index put out by Standard and Poor's affiliate, which lists the over-the-counter price or the stock with over-the-counter prices for the months of April, May and June on a daily basis.

Q Would you look through that document and see if it covers other time periods?

A This one covers April, May and June of 1968. These are prepared right through --

Q I'm asking you to look at the balance of the pages of that exhibit.

THE COURT: Why don't you tell us.

MR. MANEY: Your Honor, I represent they cover the over-the-counter stock quotations for the period April, 1968 through March, 1970.

THE COURT: Okay.

THE WITNESS: It's not labeled that way.

THE COURT: It's not on the cover of the document.

THE WITNESS: Yes.

MR. MANEY: Your Honor, they are really composites of a number of different quarterly reports.

THE COURT: All right. And DO, do you want to ask about DO?

Q Is DN a historical record of what period in the daily press during the time period?

A Yes.

Q Is DO the same thing for securities traded over the New York Stock Exchange for the same period?

A Yes.

THE COURT: What was the first? If DO is the stock exchange, what was the first one?

THE WITNESS: Over-the-counter market.

MR. MANEY: I offer Exhibits DN and DO, your Honor.

VOIR DIRE EXAMINATION

BY MR. ATLAS:

Q Mr. Vogel, these documents were in your file, DO and DN.

THE COURT: Are they being offered as material that he used?

MR. MANEY: No, your Honor. They're being offered as an historical record of market quotations which would appear in the Wall Street Journal on a daily basis. I'm not suggesting that Mr. Vogel looked at this document. He looked at the Wall Street --

THE WITNESS: Journal, New York Times, et cetera.

MR. MANEY: This is merely an historical compilation.

THE COURT: This is a reference for all of us.

MR. MANEY: It is a reference to the market quotations of securities.

MR. ATLAS: It seems to me, your Honor, it is not relevant if it is not established that Mr. Vogel used these quotations.

THE COURT: I think Mr. Maney may wish to ask Mr. Vogel questions about what prices were at certain times or some of us my wish to know. I don't know what he's going to do with it, but it doesn't do any harm to have a copy of

Standard and Poor's.

MR. ATLAS: If he's going to establish these are the figures Mr. Vogel used, I have no objection. Otherwise I don't see what relevance it has.

THE COURT: Well, overruled.

xx (Defendant's Exhibits DN and DO, received in evidence.)

BY MR. MANEY:

Q Mr. Vogel, I think I interrupted you. You were saying as to companies that were not publicly traded, how did you value those?

A Well, there were two ways.

One, if a company had reported earnings that I could use, I would take an average of three years of reported earnings, and multiply that by ten.

To the extent that there was a hundred percent ownership by the railroad, or something short of that, I would take a track of that total and that would be my value for that particular asset.

Q Why did you do that, why ten?

A It happened to be what I considered to be a reasonable rule of thumb in terms of capitalizing earnings.

THE COURT: Do you consider that a conservative or -- I don't know if there is an opposite of conservative in accounting -- liberal factor for capitalizing earnings?

THE WITNESS: I say it's probably on the conservative side as opposed to the liberal side. I think you might find some people say do it at eight, 12, some 20.

THE COURT: I understand sound accounting practices are such to vary the capitalizing factor, depending on the industry sometime, right?

THE WITNESS: Yes, and your sort of inclinations as to the industry.

Q Were there companies in this Penn Central complex that were neither publicly traded nor had publicly reported earnings?

A Yes, there were. There were a number of subsidiaries of the railroad which I pulled out of there. There was a stockholdings proxy in terms of when they changed the name in the Spring of 1969, in that they listed some subsidiaries at what they called net asset values, which is essentially net worth. I accepted those values as being a value for those subsidiaries. It was an important document.

Q Did you perform this kind of calculation in the summer of 1968?

A Yes.

Q Were you looking at all the companies?

A Not all the companies. Certain of the companies at that time and others as the documents flew in or flowed in in terms of coming to my attention.

Q Were these companies debt free?

A Debt free? No; if there were either -- for example, if some of the stock had been pledged, you could take Pennsylvania Company as being one example, that stock was pledged to support the bank revolving credit agreement, except the company is worth considerably more than the 300 million bank revolving credit, and consequently what I did, if there were any encumbrances or any pledges, or whatever, I would deduct from those values whatever the encumbrances or pledge or whatever was.

Q Did you make any valuations of these assets after the summer of 1968?

A Yes, periodically, as I would view the materials coming in, from time to time, I would make calculations in terms of any changes that I saw.

Other times, if I saw there wasn't any predictable or observable change -- I didn't just physically sit down and write something down, no.

Q Did you reduce these calculations to writing?

A The calculations I made in some cases in writing, yes, sir.

Q Did you preserve those notes?

A No, I just threw them away. I do that every day.

THE COURT: May I ask --

MR. BREINDEL: May I have the last answer back, your Honor? We are having difficulty hearing the witness.

(Answer read.)

THE COURT: You mean you do calculations on various matters every day and throw your notes away when you are finished?

THE WITNESS: Basically, yes.

THE COURT: How much time would you say that you spend on the original analysis?

THE WITNESS: Your Honor, it's literally and physically impossible to make that calculation.

THE COURT: I suppose so, but let me try to get some feeling of the situation.

Over what period of time did you work at it?

THE WITNESS: On the original one?

THE COURT: Yes.

THE WITNESS: From time to time, over the period sometime in the latter part of 1967 through July of 1968, it was an on-going appraisal.

THE COURT: Roughly six or eight months, over a period of six or eight months?

THE WITNESS: Yes, sir.

THE COURT: Would you say that you worked on it every day, I mean some part of every day?

THE WITNESS: I would gather I wouldn't have worked on it some part of every day, but I certainly put in a lot of time during that period on it.

THE COURT: You say in your opinion it added up to a matter of a total, if it were totaled -- and those can only be your best estimate; it has to be very vague -- several working days or several working weeks or a working wee or --

THE WITNESS: Your Honor, if I could answer the question with any degree of competence, I would. I just can't. I'd have to say there certainly were hours put into it but whether you could measure that in a 24-hour, 48-hour, 72-hour time frame, I can't say.

THE COURT: All right.

That analysis you are not competent to make.

THE WITNESS: Excuse me? I just didn't keep a record of the time, your Honor.

THE COURT: I'm kidding.

Q Now, Mr. Vogel, do you recall any communications you had with officers or representatives of Penn Central from the Summer of 1968 through the balance of that year?

A Summer of 1968 through the balance?

Q Yes.

A I don't remember anything significant.

Q Do you recall any communications or discussions, communications with personnel of Penn Central or discussions about Penn Central during 1969 up to the beginning of September?

A 1969?

Q 1969.

A There was a number of cases in there where we had -- for example, I think the annual review is written in that period. I don't remember anything specific. But I'm sure there were various discussions about Penn Central during that period.

THE COURT: When you say discussions, do you mean within the Goldman, Sachs family or between Goldman, Sachs personnel and Penn Central or both?

THE WITNESS: Within the Goldman, Sachs family. Relating to me is what I assume the question is.

Q Did you read blue sheets about Penn Central prepared during 1969?

A Yes, I read every blue sheet.

Q Every blue sheet. Let me just hand you a copy of what's been received as PX-21 in evidence.

Do you recall having read that blue sheet at or shortly after the date it bears?

A I'm certain I did, yes.

Q Do you remember reading it?

A Do I remember reading it?

Q Do you have a present recollection of having read it?

A Oh, yes.

Q Do you recall whether you were in the office of Goldman, Sachs on or about February 27, 1969?

A No. I believe I was on vacation at that period.

Q There is a reference in there to the temporary nature of the proceeding; do you see that, Mr. Vogel?

A Yes.

Q Do you recall what your understanding was of the meaning of that phrase at the time?

A Well, that the increase from a hundred to a hundred fifty was going to be temporary, and that they were planning more permanent financing in another direction, in the immediate future, or near future.

Q What other direction?

A Well, they had, I think, two things in mind; one was an over-all bond program that was going to refinance a good deal of the short-term debt, and I believe that this memo indicates that they were in the process of negotiating a new revolving credit agreement.

Q There is also a reference to access to credit.

Do you see that reference, on the same line?

A Yes.

Q What was your understanding of the meaning of that phrase?

A Access to credit?

Q Yes.

A Well, it meant to me that the writer, in this case, Pieter Fisher, and our views were at that time that Penn Central had access to credit, which meant that if they needed to raise cash in some way, they had the ability to do so.

Q In what way did they have the ability?

A It's by --

MR. ATLAS: Objection, your Honor, to the extent it calls for a further clarification of Mr. Fisher's understanding.

THE COURT: I don't assume that he's referring now to what Mr. Fisher thought but what this witness now thinks "access to credit" means.

MR. MANEY: Mr. Vogel's understand.

MR. ATLAS: Objection.

THE WITNESS: Access in my view and in the view that is expressed here, as I understand it, is the ability to raise cash from sources sufficient to meet their on-going obligations.

Q Mr. M.L.E., is that Mr. Evans?

A Yes.

Q Mr. M.L. Evans was a credit analyst?

A Yes.

Q This is a discussion about bank lines, is that right?

MR. ATLAS: Objection, your Honor --

A Well, there is a discussion --

MR. MANEY: Your Honor --

THE COURT: We can all agree it relates to it in part.

Q In part it's a discussion about bank lines.

A Increasing credit lines, yes.

Q To what extent did credit lines or bank lines have anything to do with credit?

A Actually, credit lines, bank credit lines, were basically a short cut, really, used by investors who would like the comfort of seeing committed bank lines of X, whatever the commercial paper was outstanding, and I suspect the reason for that was, or I know the reason for it is they really didn't want to do their own analysis.

THE COURT: You mean it's a short-cut method of them assuring themselves that the issuer is creditworthy without making an analysis?

THE WITNESS: Had cash available to meet the notes, yes, sir.

THE COURT: It would be more than that; it would give the buyer of the paper some degree of security?

THE WITNESS: What it represented, your Honor, was their knowing that certain banks have expressed a willingness to lend the company money under a line of credit to meet a short-term obligation.

That's what I meant by short cut it.

THE COURT: I understand that. What I meant by my part of the conversation was that there may be other advantages to a purchaser of commercial paper in knowing that the issuer has the bank lines than the one of simply knowing that some bank has done its homework and is satisfied.

THE WITNESS: The only other advantage that I would think of is that if in fact in setting up his list of approved names, if that is one of his criteria, fine, but it is not -- it is a simplistic criteria.

If a company is not going to meet its obligation, it doesn't make a particle of difference how many bank lines it has. They're really not from a credit point of view that significant. It's important as an expression of a bank's willingness to lend, but it's not material or relevant to the creditworthiness of the company.

THE COURT: I want to be sure I understand this because it's kind of esoteric to a non-credit man and it's important in the case.

Are you saying that it isn't very important with regard to the commercial paper whether there were additional bank lines because the bank lines wouldn't mean anything in the crunch, if it came to a crunch, and the issuer couldn't pay the commercial paper?

THE WITNESS: I'm saying that if circumstances were such that the company's ability to meet its on-coming obligations had so deteriorated by virtue of whatever circumstance, that their only alternative to meet that commercial paper was to go into the banks, borrow under the lines of credit, who were also looking at the same sets of circumstances, indicating that deterioration, that at that point of time there isn't a banker that I know of would put good money after bad.

THE COURT: Well, I can understand that, but that leads me to ask some questions which may or may not be difficult for you, but, in any event, some of your colleagues, Mr. Wilson in particular, I gather, from the evidence so far in the trial, did push Penn Central farther down the line to increase their bank lines, didn't they?

THE WITNESS: Yes.

THE COURT: And did so, as I understand it, on the basis that investors, some investors, anyway, had expressed the view that they wouldn't buy any more papers or something like that, unless those lines were secured, do you find what you have just said in all inconsistent?

THE WITNESS: No, sir. Essentially -- my interpretation of his remarks, the lines of credit are essentially marketing-oriented. If you want the full spectrum of investors, looking towards buying your paper, and an increasing portion of those investors are looking to, for whatever reason, a hundred percent line coverage, and you don't have a hundred percent line coverage, then you have eliminated that spectrum of investors from your potential investor list. And to that extent it's a marketing concern.

And I know, for example, during that period, I've gotten from both the salesmen and directly, that more and more investors were looking towards that, for whatever crutch, they felt it was worthwhile.

THE COURT: I've just written this down. Let me see if it's correct, then, as your view of the matter:

The availability of bank lines is a good device for marketing commercial paper to investors, but it doesn't have any material effect on the credit of the issuer, creditworthiness of the issuer?

THE WITNESS: That's correct, sir.

Q Mr. Vogel, was the company's inability to get bank lines of credit significant?

A Very definitely.

Q In what way?

A If a company was unable to get bank lines for credit reasons, in other words, the bank they were approaching for a line concluded that the company was not creditworthy, they would not extend the line of credit and that would be highly significant to me because it certainly would reflect another, what I consider to be, lender's views on that particular credit.

Q Would it be possible to not be able to get lines for other than credit reasons?

A Very definitely. All during this period, for example, in periods of tight money, it's very difficult to get lines. Banks concern themselves as to where they get the money from themselves before they can extend that line. They have a tendency to have lines well in excess of their capacity to lend with the view that hopefully they will never be used but they will get paid by balances and so forth. In tight money periods they sure as heck don't want people coming in calling on their lines at a point in time they have to go out and sell a CD at a price.

Q Do you recall let me show you a set of blue sheets. I will ask you some questions about a number of them.

First, I would like you to look at a blue sheet dated September 3, 1969, which has been received as PX 35.

Do you recall having read that blue sheet, Mr. Vogel?

A Yes, I am certain I read it.

Q That date of September 3, that refers to a meeting being set up?

A Excuse me? Yes.

Q Did you attend that meeting?

A I attended the meeting, yes.

Q Before we get into the meeting, do you have any specific recollection of a communication with Penn Central, a conversation about Penn Central or having written any document concerning Penn Central in 1969 up to September 3?

A Personally did I write any documents?

Q Or talk to anybody at Penn Central or talk to anyone at Goldman, Sachs about Penn Central?

A I don't recall specific conversations. I am sure I had many with Wilson and others.

Q Did you prepare a memorandum of the meeting?

A The meeting --

Q The meeting set up --

A As a result of that blue sheet, yes, I did. The meeting that was proposed in that blue sheet took place and I prepared the memorandum on it.

Q That is the memorandum that appears right below PX 35?

A Yes, it is.

THE COURT: PX 20?

THE WITNESS: Yes, 20.

Q That is dated September 19?

A Yes. That is an erroneous date.

Q How do you know that?

A My calendar indicated --

THE COURT: I know PX 35 also says "We set up a meeting for Friday, September 12th."

Was that a meeting that actually took place?

THE WITNESS: Yes.

THE COURT: Do we know whether it took place on the 12th of September?

Q When did it take place?

A The 12th, the 11th, I am not sure.

Q But not the 19th?

A No.

THE COURT: Is it of any significance?

MR. MANEY: No. There is no reference to a meeting for September 12th. There was a question in some of the deposition testimony that has been designated about whether there was another meeting. This is the same meeting. That is the only point.

Q Would you please put down the blue sheet.

What do you recall about the meeting of September 11th or 12th?

A Not a great deal. I think it was probably two areas: One, it was my first meeting with O'Herron, Johnathan O'Herron, and he was kind of sitting to my left, and I sort of watched him the whole time the meeting was going on, to sort of get an idea what sort of person he was, how he conducted himself and so forth.

And then there was a discussion in relation to their not wanting to go to a lot of little banks and ask for credit commitments.

Q Why were you watching Mr. O'Herron to see how he conducted himself?

A He was the treasurer. It was the first time I met him. I do that with everyone, for that matter. In a business sense, I wanted to see what kind of a grasp he had on the affairs of the railroad at that point and how he expressed himself.

Some people come out like a bull elephant and some are quiet, reserved. I wanted to get a flavor of how he conducted himself.

Q Did you form an opinion in that regard?

A Yes. I was reasonably impressed with him at the time. I thought in the time he was there he had done quite a bit to bring himself up to date on the railroad.

Q What did you understand with reference to -- I think you said a lot of little banks -- what did you understand that reference to be?

A As I understood it, by virtue of the fact he had so much to do and so forth, he didn't want at that point to have to negotiate with all sorts of -- with little banks in order to get new bank lines.

THE COURT: What kind of lines? New bank lines?

THE WITNESS: Yes.

Q Why deal with little banks?

A Penn Central had thousands of little banks -- "thousands" is probably an exaggeration, but a number of little banks. They were already -- some of the major banks were already participants in the revolving credit and there was negotiation with them. They had relationships with many, many other smaller banks and it would be simpler for them at that point of time to go to those new banks and bring them into the picture, particularly since they had a call and we were in a tight money period to bring in newer banks as opposed to trying at that point to increase facilities with their existing banks.

Q Do you remember anything else about that meeting?

A No.

Q Would you look at the blue sheet again, PX 20. I call your attention to the last sentence of that memorandum: "John also pointed out that the company will be in a very tight cash position in the first quarter of 1970."

Do you recall being advised of that?

A I don't recall the specific circumstances, no. I was aware of the substance, however.

Q Were you aware of the substance of that prior to that meeting?

A That's one of the reasons why you borrow money. If you need cash to meet some period when your revenues and your outlay of cash are in somewhat of conflict, you borrow money to cover that period. This is very common.

THE COURT: That may be true, but that wasn't responsive to the question Mr. Maney asked; if you knew before the meeting that Penn Central would be in a tight cash position in the first quarter of 1970.

THE WITNESS: Not specifically tight cash period, but I think the winter period of railroad operations --

THE COURT: Let me ask you this.

You included this statement in your blue sheet and I take it that you think that he meant something more than the ordinary seasonal tight cash, or did you mean that? Did you think he meant that?

THE WITNESS: I expect he was talking about the ordinary seasonal-type of cash requirements.

THE COURT: That was what you meant by this?

THE WITNESS: Yes.

Q The sentence continues: "and asked if we could put out as much paper as possible in April or longer."

What was your understanding of the meaning of that?

A To cover the gap between cash requirements and perhaps cash outlays. That's very commonplace, your Honor. Companies do that. They ask us, "Look, we are willing to pay an extra quarter, whatever, if you will just bridge our peak cash period," so to speak.

THE COURT: When I practiced law I didn't have clients who happened to deal with commercial paper, but I certainly had clients who had seasonal demands for cash and who did whatever was necessary to get the money from somebody to cover it. So I understand.

Q Mr. Vogel, when was the next time you had any contact with anyone from Penn Central after this meeting reported in PX 20?

A Recorded in PX 20?

Q I say after that meeting.

A A-84.

MR. ATLAS: Objection. The question doesn't require Mr. Vogel to look at the document.

THE COURT: See if you can remember when the next one was without looking at the paper.

THE WITNESS: Shortly after that meeting I got a telephone call from Pat Bowditch of the First National City Bank.

THE COURT: About how long do you mean by "shortly after"?

THE WITNESS: I would have to refer to the blue sheet for the date, but it was shortly after that meeting.

THE COURT: Is it significant?

Q Did you make a blue sheet of that?

A Yes, I did.

Q Did that reflect the date?

A Yes, sir.

Q What was that communication with Mr. Bowditch?

A Well, he had called because someone had told either an associate of him or him directly, that Goldman, Sachs was having a problem selling the commercial paper notes of Penn Central, and he felt that he should know about those problems because they were the agent bank for the $300 million revolving credit and, as a matter of fact, he indicated to me that if that were the case then they would possibly increase the revolving credit to cover the run-off of commercial paper and he was --

THE COURT: Increase the revolving credit?

THE WITNESS: Yes.

A (Continuing) To me that was certainly an important indication of the willingness to lend them further. He seemed to agree with me on our analysis of the picture.

Q Mr. Vogel, would you look at the second page of that collection of blue sheets. I call your attention to one marked A-84, dated October 3, 1969.

A Yes, sir.

Q Is that the memorandum about your conversation with Mr. Bowditch?

A Yes, it is.

Q Mr. Vogel, I show you Exhibit A-187 in evidence, an article from The Wall Street Journal, dated November 28, 1969, and I ask you if you recall having read that or being aware of the substance of that article at or about that date?

A I know I was aware of the substance. I don't recall the specific article.

THE COURT: What is the date?

THE WITNESS: November 28, 1969.

Q Did Penn Central's omission of a dividend have any credit significance to you?

A Yes. I thought it was a very positive indication of them conserving cash.

Q Did you attend the meeting in December, Mr. Vogel, with a representative of the Penn Central?

A Yes, I believe I did.

Q Do you recall who was present?

A I don't remember exactly who from the railroad was there, but I know George Van Cleave and myself were there. There may have been someone else there.

THE COURT: Mr. Vogel, I understand you said it was a very positive indication of conserving cash.

What do you mean by "positive"?

THE WITNESS: It meant they would have that much more cash to meet on-coming obligations.

THE COURT: How much did the dividend amount to?

THE WITNESS: Off the top of my head, I think it was around 40 to $60 million, the annual dividend.

THE COURT: So a quarterly dividend would be about ten or 15?

THE WITNESS: Somewhere around there. I can't exactly remember the figures.

Q Mr. Vogel, would you look at Exhibit PX 22, a blue sheet dated December 9, 1969?

THE COURT: Is it in the folder?

MR. MANEY: Yes, sir.

MR. ATLAS: Your Honor, I would object to have the witness look at it unless it is strictly for the purpose of identifying who was there. Otherwise, I think the witness' recollection should be tested as to what occurred at that meeting.

MR. MANEY: Your Honor, the exhibit is in evidence. I am trying to save some time by not going through this whole routine.

THE COURT: I am not going to stop anybody from looking at an exhibit. I don't know what the question is going to be.

What date is it?

MR. MANEY: December 9, your Honor. It is the fourth page of the booklet, third entry on that page.

THE COURT: Why don't you ask the question before Mr. Vogel reads it and then if he needs to read it, he can.

Q Mr. Vogel, is PX 22 an accurate record of what transpired at that meeting, to the best of your recollection?

A I haven't read it yet.

(Pause.)

A Could you repeat the question?

THE COURT: Does this memorandum accurately reflect what happened at the meeting, the meeting that it describes?

THE WITNESS: Yes.

Q Do you remember anything that happened at the meeting that is not recorded in the memorandum?

A No, I don't have any recollection now.

Q Mr. Vogel, let me show you a document. This is designated A-76, it is part of Exhibit A, which is in evidence.

MR. ATLAS: I don't think we had an answer to the first question whether there is anything else besides what is contained in that memorandum.

THE WITNESS: I don't recollect anything other than what's in that.

Q Can you tell me what that is, Mr. Vogel?

A This is A-76?

Q Yes.

A It is a record of checkings, investigations made with various banks of the Penn Central Transportation Company. It is done by the Credit Department.

THE COURT: Your Credit Department?

THE WITNESS: Yes, sir.

A And it is intended to check on the bank's opinions and up-to-date thoughts on a particular account and usage of lines and what they thought about it and so forth.

This is a reflection of those checkings.

THE COURT: But all this has to do with Penn Central, is that right?

THE WITNESS: Yes, these are all Penn Central.

THE COURT: I can't read the date here at the top. I see the typed date.

THE WITNESS: September 11th.

MR. MANEY: I believe there are different dates for different communications.

THE COURT: Does this mean, for example, on September 11th, 1969, there were checks made with Chemical, Irving, Manufacturers Hanover and City Bank?

THE WITNESS: Yes, four banks.

Q Mr. Vogel, I show you Exhibit A-182 in evidence and ask you if you recall having read that article or having learned the substance contained in that article on or about February 5, 1970?

A I don't recall the specific article, but I am aware or I was aware of the substance of that article at or about that time.

Q Do you recall if you had any conversations with anyone about the Penn Central preliminary hearing results?

A Yes. The headlines here mention the firm writes off 126 million of rail reserves. I remember Bob Wilson coming over to me and asking me specifically what my views were on that write-off, and I said to him that it had no cash implication, this was a write-off of facilities, and in relation to the railroad's six billion or so of assets, it was really not an important matter. It really had no cash implications.

Q Do you recall speaking with anyone else besides Mr. Wilson concerning the year-end results on or about that time?

A Yes. On or about that time I received a phone call from Alan Rogers of the National Credit Office relating to the year-end results.

Q Who was Alan Rogers?

A He was the senior man, or had been for many, many years the senior man in the National Credit Office Division of Dun & Bradstreet, which rated commercial paper issuers, and Alan had been there for a good many years.

He was the senior analyst. I will put it that way.

Q How long had you known Mr. Rogers?

A I knew him way back, not only through my time at Goldman, Sachs but also, when I was with the Grace National Bank, I had some -- one day I went up with my boss to visit with Alan in terms of some accounts my boss was looking at for the bank and he wanted Alan's reports on them.

So I had known him for a good many years, is what I am saying.

Q Is Mr. Rogers alive today?

A No, he passed away a couple of years ago.

THE COURT: Was Mr. Rogers ever deposed?

MR. MANEY: No, your Honor. He died before he was deposed.

Q Did you during the course of your acquaintance with Mr. Robers form any opinion as to his reputation, character and integrity?

A He absolutely was one of the finest men I have ever met. He had a great deal of respect. I looked up to him as a credit man, a senior analyst. He certainly had many more years of experience than I did. There is absolutely no doubt as to his integrity, absolutely none.

Q Did you from time to time speak with Mr. Rogers concerning companies, commercial paper of which was being offered by Goldman, Sachs?

A Yes.

MR. ATLAS: Objection, your Honor. I would like to limit the time frame of the conversation.

THE COURT: I gather Mr. Maney may take the position that the mutual of confidence Mr. Vogel and Mr. Rogers--

MR. ATLAS: The witness should establish the relationship, if that is the purpose.

THE COURT: I will allow the question. I would like, for the purpose of knowing what you are talking about, to have the time specified.

Q Mr. Vogel, did you speak with Mr. Rogers during, let's say, 1969, the first month of 1970?

A Did I speak to him?

Q Concerning companies whose commercial paper was being offered by Goldman, Sachs?

A Alan called, I am not going to say every day, but he certainly called frequently, not only on issuers, Goldman, Sachs issuers. We had half the market at that time so he had plenty of reason to call us but also just on general circumstances, industry or whatever.

We exchanged views quite frequently. He did this with every other credit contact that he had, I would imagine.

MR. ATLAS: May I have the last statement read back?

THE COURT: You may have the last statement lopped off, if you want, because I think Mr. Vogel said that he imagines what he did with other people, too.

MR. ATLAS: I would object to that.

THE WITNESS: I know he did.

THE COURT: Because he told you?

THE WITNESS: A combination of both.

THE COURT: We are funny people. Legally that isn't very good proof. Theoretically what he told you might not have been so.

THE WITNESS: I know he spoke to other people, your Honor.

THE COURT: I don't doubt it. Don't get me wrong. It is reasonable to assume. After all, you only have half the market. There must have been at least one other person.

MR. ATLAS: I appreciate Mr. Vogel has a cold. May I request he raise his voice a little? I am having trouble hearing him.

Q Were you aware in February 1970, as to whether Mr. Rogers formed an opinion as to the credit worthiness of Penn Central?

MR. ATLAS: Objection, your Honor.

MR. MANEY: Was he aware.

THE COURT: Does he know whether he had an opinion, he is asking.

A As to the credit worthiness of Penn Central?

Q Yes.

A Insofar as they continued --

THE COURT: The question at the moment is whether you know whether he had formed an opinion about the credit worthiness of Penn Central at that time.

A I am trying to get the time frame.

Q As of early February, 1970.

THE COURT: Is that before the release?

MR. MANEY: Yes, before the release.

A I don't know specifically as to Alan's opinion. All I know is NCO continued to --

MR. ATLAS: Objection. I think the question pertained to Mr. Roger's opinion.

THE COURT: Sustained. I am getting a little confused here, not altogether, but somewhat, because there is a reference, as I understand it, to Mr. Rogers' having telephoned you.

THE WITNESS: Yes, sir.

THE COURT: And the implication, maybe a little because I have read the briefs, did he call you after these figures came out?

THE WITNESS: Yes.

THE COURT: Are you asking him about discussions or opinions expressed after the figures came out or before?

MR. MANEY: I am going to establish what Mr. Rogers' or what NCO's attitude was prior to the release and then whether there was any change as a result of that.

Q Do you know whether NCO had expressed any view with respect to the credit worthiness of Penn Central prior to February 5, 1970?

MR. ATLAS: Objection, your Honor.

THE COURT: Overruled.

A Do I know?

THE COURT: Yes.

THE WITNESS: Yes, sir.

(A) It was continued to be rated prime during this period, and

(B) There are reports in the file which indicated their view, regular NCO reports submitted to investors.

Q You said the file?

A Credit file.

Q That's Exhibit A?

A Yes, sir.

Q Can you locate such a report?

A There is a report dated April 21, 1969, with a classification of the commercial paper note of Penn Central as prime.

THE COURT: Can I see that?

THE WITNESS: Yes.

MR. ATLAS: I would like to note an objection to this line of questioning. If the defendant wants to establish what NCO's opinion was, the proper way to do it is to do it through NCO. These documents that are in the credit file we agreed were not coming in for the truth or the accuracy of what is contained therein. To have Mr. Vogel testify that this was NCO's opinion or reflected their opinion, I think is objectionable.

THE COURT: I think there is something to what you say. On the other hand, if somebody came in with -- well, you are entitled to cross examine.

MR. MANEY: There is an accusation by the plaintiff as to the independence of both Mr. Rogers and Mr. Vogel. I think what is critical here -- and I don't think it is a question of agreement -- is what was Mr. Vogel's understanding on February 5th as to NCO's opinion, if that understanding was based on the credit file, and these documents are in evidence for that purpose.

THE COURT: If it's being -- I don't think there is a difference either. Counsel for the plaintiff is objecting on the grounds that you are offering this for the truth of the contents, which you are apparently not. You are offering it, as I understand it, now, to show the reasons for Mr. Vogel's beliefs at the time.

MR. MANEY: I agree it is not an issue in this case as to what NCO's actual opinion was, but merely what they expressed to the world at large.

MR. ATLAS: As to what Mr. Vogel's opinion is, Mr. Vogel is a witness and can be asked. To refer to documents in the credit file other than to indicate that was the basis of his opinion --

THE COURT: That is what he's doing it for, as I understand. You are asking him about this to show that, among other things, he relied on this to believe that NCO considered the Penn Central paper to be prime at that time; is that not right?

MR. MANEY: I know independently, Judge, Penn Central, yes.

THE COURT: I do not think so, no.

Now you are thoroughly confused, I'm sure, but I think you have answered the question already, anyway.

Q Mr. Vogel, you spoke to Mr. Rogers on February 5th?

A Yes, sir.

Q Do you now recall what was discussed in that conversation?

A Not independently of what I've written on it.

Q You prepared a memorandum of that conversation?

A Yes, I did.

THE COURT: When did you prepare it?

THE WITNESS: I would say the day that it occurred.

Q Would you look at PX 10, a blue sheet dated February 5th, 1970.

THE COURT: I thought everybody in this case memorized everything by now.

MR. MANEY: Mr. Breindel changed the numbers on us, your Honor.

THE COURT: Px 10?

MR. MANEY: PX 10.

A PX 10?

Q Yes.

A In the file is PX 1. If you are talking about my --

THE COURT: No, I think he's talking about this one here.

THE WITNESS: Oh, I see. This?

Q Yes. I show you a copy of PX 10. Is that the memorandum of your conversation with Mr. Rogers?

A Yes, it is.

THE COURT: Are you going to ask about this?

MR. MANEY: Yes, your Honor.

THE COURT: Good.

Q Did that conversation have any credit significance to you?

A Credit significance?

Q Yes.

A I don't have any total, you know, a real recollection of the conversation other than what's recorded. But certainly if Alan Rogers in any way had indicated that he felt adversely towards Penn Central's credit worthiness, I would have recalled that.

THE COURT: I don't know if that is Mr. Maney's question.

MR. ATLAS: Move to strike the answer.

THE COURT: I think Mr. Maney is asking you whether the whole substance of the conversation, in your opinion, had to do with the credit worthiness of the company. Do I understand your question?

MR. MANEY: Had any effect on the issue of credit.

MR. ATLAS: At the time of the conversation?

MR. MANEY: Yes.

THE COURT: Well, the subject related to the sharply reduced earnings. Do you want to ask whether Mr. Vogel thought the subject of sharply reduced earnings had anything to do with that, or are you talking about rating, or what?

Q I am asking did the fact of Mr. Roger's communications to you have any effect on your evaluation of the credit of Penn Central?

A No.

Q Why not?

MR. ATLAS: Objection, your Honor.

THE COURT: Overruled.

A Why not?

Q Yes.

A I conducted my own independent evaluation of the credit worthiness of Penn Central. Certainly if Alan Rogers had adverse opinions, I would have perhaps re-examined my own thinking and asked Alan why and so forth. But in terms of my own evaluation, it had not credit significance.

THE COURT: Let me ask you a sharper question -- I don't mean sharp in the sense of more intelligent, Mr. Maney, just a little narrower.

You have here that Mr. Rogers called you to express concern over the sharply reduced earnings announced in the newspaper.

THE WITNESS: Yes.

THE COURT: Did the fact that your old pal, Mr. Rogers, who was so important in the rating of paper and the paper of your issuer, felt it necessary to call you to express his concern seem to you a factor that you should take into consideration in determining or reassessing Penn Central's credit worthiness?

THE WITNESS: Alan called me regularly on these matters, your Honor, and insofar as I had already taken into account in my own thinking the subject of his phone call, had he at that time said to me, "Jack, I am really concerned about the credit worthiness of Penn Central," not the earnings now, then I certainly would have spent a great deal of time asking the reasons why. And I may still have concluded that it was credit worthy despite Alan.

THE COURT: Yes, I don't mean you couldn't. You seemed to be so decisive in saying it didn't affect your attitude towards credit worthiness that I thought you almost thought it was not even eligible for consideration.

THE WITNESS: Oh, no, you always look at earnings, your Honor.

THE COURT: I would think so.

Q What was your understanding of Mr. Rogers' comment that he would continue to carry Penn Central as a prime name?

MR. ATLAS: Objection, your Honor.

THE COURT: Overruled.

MR. ATLAS: Your Honor, the understanding is in the memo. The memo, as he said, is the sum and substance of everything he recalls about that conversation.

THE COURT: Is the memo the sum and substance of everything you recall about the conversation?

THE WITNESS: Yes.

THE COURT: Well, then you can ask him, if you want, what his statement on the subject means.

Q Mr. Vogel, would you look at the last sentence of your memorandum, PX 10, the sentence beginning "Alan said." Do you have that?

A Yes.

Q What does that mean?

MR. ATLAS: Objection, your Honor. The document speaks for itself.

THE COURT: What did you mean -- please don't hobble me by these objections. I'm trying to get a rounded view of the facts that occurred here. I'm the tryer of fact and I have to make a very important decision. I don't mean to suggest that I want to go beyond what the rules of evidence permit or to alter them differently in any way as to one side to the other, but I think that the point of view is narrow since the question certainly can be asked: When you wrote that, what did you intend to convey? He's stuck with what he said, but I want to hear if there is an amplification of it.

THE WITNESS: Did you want me to answer that question?

THE COURT: Yes, please.

THE WITNESS: I intended to convey the fact that as a result of Goldman, Sachs' continuing to market commercial paper of the Penn Central that Alan Rogers, or NCO would have to, have to continue to either rate it or pull its rather, whatever their choice may be at the time. That's what I intended to convey.

Ordinarily speaking, your Honor, if a dealer, not only Goldman, Sachs, but any dealer, would tell -- if it's Alan Rogers, "Are you going to handle paper of this company," and we'd say, "No, we're not going to handle it," for whatever reason, "the company doesn't want it" or whatever, they would just close the files and they wouldn't have to do any more analysis and whatever work that involves.

So that was the meaning I was trying to put across. The fact that we were handling the paper made it imperative that they continue their own investigation.

THE COURT: Well, that isn't what you said here, though. You said -- if you read the last sentence, you say, "that as a result, you are continuing to carry Penn Central as a prime name."

THE WITNESS: Until they decided otherwise, it was prime that day, and as far as I know it was going to continue to be prime.

Q Do I understand, was there anything in that conversation that led you to conclude that Mr. Rogers, or that the decision to rate Penn Central prime was anything other than an independent decision by NCO?

A Absolutely not.

Q Would you look in that page of blue sheets at a memorandum dated February 5, 1970, marked PX 11.

MR. ATLAS: Your Honor, I would just object. If Mr. Maney would ask if that blue sheet is an accurate reflection of what occurred that date, the conversation at the meeting --

THE COURT: How can he say that without looking at it?

MR. ATLAS: That's my point; have him look at it for indicating if that is an accurate reflection of what occurred at that time.

MR. MANEY: Are you objecting? I don't know --

MR. ATLAS: I withdraw the objection.

THE WITNESS: PX 11?

Q Yes, do you have that?

A Yes.

Q Do you recall reading that memorandum on or about February 5?

A Yes. I'm certain I did.

Q Do you recall whether at the time there was anything in the memorandum of credit significant to you?

A Mr. Maney, all information that I receive on a particular issuer has credit significance until I put it into context with my analysis, and to the extent that after having reviewed it in that sense I'm still convinced the company is credit worthy, to that extent, it had credit significance.

Q Did you attend a luncheon meeting with officers of Penn Central in early February 1970?

A No, I did not.

Q Did you receive a blue sheet that recorded what took place at that meeting?

A Any blue sheets written on those meetings I saw.

Q Would you look at PX 12, a blue sheet dated February 6, 1970.

A Yes, sir.

Q Do you recall having read and received that blue sheet?

A Yes, I did.

Q After reading and reviewing this blue sheet, did you do anything?

A Did I do anything?

Q Yes.

A Yes. In context with my continuing review of the railroad and the various assets and et cetera, I used that information which was developed at that luncheon meeting in terms of expected expenditures and fund raising programs and so forth as additional facts to be considered within the context of my analysis.

I thought it was a very positive meeting in that it developed information which I was able to use and which didn't lead me to believe in any way that they weren't able to do it or that it wasn't a viable program.

Q Do you see on that blue sheet and actually on the next one, which I'm not sure whether that is PX 13 or whether PX 13 has been withdrawn.

MR. BREINDEL: PX 12.

Q On the second page of PX 12, both the entry for February 6 and a subsequent entry for February 12, same exhibit, do you see a reference to an investor subsequently identified as Brown Bros., having temporarily removed Penn Central's name from the approved list; do you see that reference? I'm looking at the second page of the February 6 blue sheet.

A Yes.

THE COURT: Third line after February 12, 1970:

"I told John that the large investor who had temporarily taken their name off their approved list did not wish to meet with him to review the 1969 figures as they felt it would be awkward. John O'Herron guessed that the account we were referring to was Brown Bros.

THE WITNESS: Yes, I see that.

Q And the earlier reference, the fourth line from the top on that page.

A Yes. I told him about a large New York firm.

THE COURT: Yes;

Q What did that mean to you from a credit standpoint?

A From a credit standpoint?

Q Yes.

A Nothing.

Q Why not?

A Well, investors regularly take names off their approved lists and put them back on. I think if the Brown Bros., for example, was a line bank, one of the banks extending a line of credit, if they had said, "We are taking it off because we feel the company is not credit worthy," and their commercial owners agree with that, I would then be concerned.

Q Do you know whether Brown Bros. was a line bank?

A I believe they were, backup lines.

Q Backup?

A Yes.

THE COURT: You mean --

THE WITNESS: Stand-by.

THE COURT: -- backup line for Penn Central?

THE WITNESS: Yes.

Q Do you know whether Brown Bros. ever lent money on that line to Penn Central?

A I believe they did.

Q You wouldn't know when that occurred?

A Well, during the Spring of 1970, when the paper was running off for lack of sales and so forth, they went into the standby lines and borrowed almost all, I think there was a couple of out-of-town banks that chose not to make loans at that time because of some dispute as to effective dates of lines. But that was not -- Brown Bros. wasn't one of those. So it was sometime in the Spring of '70 that line was exercised.

Q Did anything come to your attention from February 6 on up until March 13 that was of any significance with relation to following the credit worthiness of Penn Central?

A February 6 to March 13?

Q Yes.

A Not that I can recall at the moment, no.

Q Would you look at the blue sheets and see if that refreshes your recollection?

A Yes. I had a conversation per PX 23 relative to their arranging this bridge loan.

THE COURT: Who did you have a conversation with?

THE WITNESS: I believe it was John Schaeffer, your Honor.

THE COURT: Would you remind me who he was, please.

THE WITNESS: He was in the treasurer's office. I'm not sure exactly what --

THE COURT: Their treasurer's office.

THE WITNESS: Right, and we talked about them having arranged a $50 million bridge loan through the Chemical Bank to cover an earlier take down of the proposed financing which they intended to do somewhat later in the year.

MR. MANEY: I don't think it is stipulated, but I trust Mr. Breindel will stipulate that Mr. Schaeffer was Treasurer of Penn Central.

MR. BREINDEL: If you so represent, we so stipulate.

THE WITNESS: This was just another indication of the company's access to credit. They were able to go out and arrange this bridge loan.

Q Did you, Mr. Vogel, during the period, let's say, beginning of March 1970, believe that Penn Central was credit worthy?

A I never doubted that Penn Central was credit worthy during that period.

Q What were some of the assets available to Penn Central at that time?

A Assets?

Q Yes.

MR. ATLAS: At which time is this now, your Honor?

MR. MANEY: Early March 1970.

THE COURT: Let's take an afternoon recess and we will find out about that after.

(Recess.)

(Question read.)

A I believe we have discussed some of them earlier, but basically, they were companies that were prominently mentioned either in their annual reports or in their various documents like the proxy statement covering the name change in the Spring of '69. A very valuable document in terms of content was the prospectus covering the debenture deal by Pennsylvania Co. in December of '69.

In September, I believe, John O'Herron told us that the receivables, accounts receivables of the railroad were an asset that could be used to support commercial paper sales, if necessary. So as time went on, we accumulated all those assets, and in terms of how I valued them, I think I mentioned earlier the public companies I valued in terms of the number of securities held as to the market value.

Q You used the same type of analysis?

A Yes, all through, Mr. Maney. And then if there were any debt against those assets, for example, all the debt of the Pennsylvania Company, all the short-term debt of the railroad, such as the borrowings on the revolving credit and the commercial paper debt and, for example, in the case of 1970, the railroad had told us what their financing plan was for that year, so I incorporated that into deducting from a sum of the values of all the companies I looked at to see whether or not there was what I considered to be more than ample margin to take care of any lack of earnings.

Q Could you identify some of these companies by name?

A Yes. Pennsylvania Company and some of its subsidiaries, including Great Southwest, Arvida, D.T. & I. Railroad Company.

Q Is that the Detroit, Toledo & Ironton?

A Yes. There is a whole list of them, which might be easier, in the prospectus in December. I can tick it off, if you like.

Q I show you a copy of PX 63 in evidence.

A Yes, this was what I am referring to.

Q That is an offering circular, or did you say prospectus?

A An offering circular, yes. On page 7 they mention subsidiaries and/or investments of the Pennsylvania Company which in turn was a subsidiary of the Penn Central Transportation Company. They mention companies such as Arvida Corporation, Buckeye Pipe Line, Detroit, Toledo & Ironton Railroad, the Great Southwest Corporation, the Norfolk and Western Railway common stock and also there was a certain amount of common stock converted into debentures that the railroad had to divest itself of the Norfolk Company.

The value given in there for the Philadelphia, Baltimore and Washington Railroad Company, the Wabash Railroad Company common stock which was, I believe, convertible into Norfolk and Western, and I took the Norfolk and Western Central for that. And Wabash Railroad Company preferred stock, which I took from the offering circular itself. And that came up there to something in the neighborhood of $922 million. I didnot use 922 million. I used my own calculations and I excluded some of the numbers that are here. In addition to that, the railroad itself had an investment in Pittsburgh and Lake Erie Railroad Company, which was a very profitable railroad. They also had in the proxy statement where they mentioned others, Clearfield

Bituminous Coal, they had a company called American Contract Company, an investment company of sorts, another company called Manor Real Estate Company, I believe a Dispatch Shops, and then there was a Merchants -- it was a company that had refrigerator cars, Merchants Contract Company or Merchants -- I don't recall the exact name -- and then they had the accounts receivable on their balance sheet which they indicated to us was available.

THE COURT: The Penn Transportation Company?

THE WITNESS: Yes, a loan.

A And that ranged up to something like $300 million alone, the accounts receivable.

So I took the aggregate values I used by using that methodology and came up with what I considered to be a cushion between that which they owe by virtue of either pledge, borrow or what and that which they needed in terms of upcoming financial requirements, deducted that from the market value of those assets and there was never any time during that period when I saw anything less than a totally huge margin of safety.

Q You mentioned quite a few. How about real estate? Did you have any analysis?

A I came up with a value for real estate, a composite of the things I mentioned earlier, of something in excess of a hundred million dollars and I can't for the life of me tell you precisely how.

Q Were there any other companies?

A Yes.

Q Do you have the credit file there, Mr. Vogel?

A Yes. I don't recall any others, Mr. Maney.

Q How about Madison Square Garden?

A Yes. I remember seeing the Circus there. I valued that. That was a New York Stock Exchange security, and I valued that at the market price.

Q Let me show you a copy of an exhibit designated A-17, part of Exhibit A, the credit file. I believe you mentioned a proxy statement before?

A Yes, this is the April 10th proxy statement in connection with the formation of the new Penn Central Holding Company and so forth. In the -- I am sorry. In it was a number of the subsidiaries of the railroad, such as -- I mentioned American Contract Company, Clearfield Bituminous Coal Corporation, Dispatch Shops, Great Southwest, Merchant Despatch. That was the one I was trying to get at before. Also there were two other companies which I looked at and they were the lease lines of the railroad. One was called Penndel Company and the other was, I think, the Pittsburgh-Fort Wayne Railroad Company, which I estimated in each case they had a loan value of approximately $50 million.

Q Based on your valuation of these assets, the net of debt, you felt that Penn Central was credit worthy in or about March, 1970?

A Yes, there was no question in my mind it was credit worthy at that point.

MR. MANEY: No further questions.

xx CROSS EXAMINATION

BY MR. ATLAS:

Q Mr. Vogel, you testified before in connection with the Penn Central-Goldman, Sachs litigation, is that correct?

A Yes, sir.

Q And on how many occasions have you testified?

THE COURT: Shall we separate trials from depositions.

Q Let's start with trials.

A Trials?

I believe this is the third.

Q Third trial?

A Yes, sir.

Q The others were and Franklin?

A I am sure you are right

A I am sure you are right.

Q Did you testify before the Securities and Exchange Commission?

A Yes, I did.

Q Did you testify at a deposition session --

THE COURT: When we talk about the Securities and Exchange Commission, you are talking about the investigation of the Penn Central, is that right?

MR. ATLAS: Yes, I am.

A Would you repeat the question.

Q Did you also testify at a deposition in the consolidated proceedings?

A I know I was deposed. I don't know what consolidated proceedings mean.

Q Mr. Vogel, would you tell me what the definition of "credit worthiness" is?

A Yes. The ability to meet on-coming obligations.

Q Is that a generally-accepted definition at least for the commercial paper industry?

A In any industry.

Q Was it your practice to perform a preliminary or initial credit investigation on potential issuers?

A Yes, it was.

Q In every case?

A 99 percent of the time, yes.

Q Would you yourself perform the initial credit investigation in every case?

A In one way or another I would be involved in the initial credit investigation of every case.

Q I believe you indicated in your direct testimony that you did approximately 90 or 95 percent of the initial investigation of Penn Central, is that correct?

A That's correct. That was a very unique credit.

Q Did you usually do that in connection with issuers?

A 95 percent?

Q Yes.

A I'd say that is a high percentage for most, but there were others.

Q Would you consider your involvement in Penn Central an exception?

A Exception in terms of credit?

Q An exception to your usual practice?

A My usual practice? Where are we now? Usual practice of what?

Q You indicated 95 percent was a very high percentage of involvement on your part in the initial credit investigation, is that correct?

A Yes, sir.

Q Did you consider Penn Central to be an initial situation.

A No. The involvement in that case was because I considered Penn Central was a very unique credit. Consequently, I felt I needed to be involved to that extent, yes.

THE COURT: I don't understand. What was unique about it?

THE WITNESS: As I mentioned, I think, here were two railroads put together by court --

THE COURT: You mean its structure was unique?

THE WITNESS: Structure, right. There was no real track record of what the earnings would look like. At that point in time there was an awful lot -- I know everybody was thinking they would be a fabulously successful railroad as a combined unit. So if you are not looking at earnings, you have to look at other areas and I felt I was better qualified to do that.

Q Better qualified than whom?

A Than the analyst that we had in the credit area.

Q Did any of the analysts in the Credit Department work with you in connection with that investigation?

A The initial credit investigation?

Q Yes.

A I am certain they did, yes.

Q Who were they?

A I don't recall. I just don't recall. They normally would prepare the yellow sheets and the green sheets and that sort of thing, white sheets, at least to that extent.

Q In connection with the initial credit investigation?

A Yes.

Q Yellow and white sheets?

A Everything would be prepared. If we decided at the last minute we weren't going to take it on, they wouldn't send them out, but the preparation was done.

Q You indicated your initial credit investigation was not reduced to writing?

A That's correct.

Q Are there initial credit investigations of potential issuers reduced to writing?

A I would say minor. If I was putting it in a scale up to hundred, it would be under 50 percent.

Q Less than 50 percent?

A Right. There were a few committed to writing.

Q What would be the reason for putting that in writing?

A No special reason.

MR. MANEY: There is no time frame in the question.

Q All my questions will be directed to the same time frame Mr. Maney was questioning you about.

MR. ATLAS: Read back his last answer on that.

(Record read.)

Q No special reason why it was not reduced to writing?

A No. If an analyst felt they wanted to write it out, take the time to do it, they could. If they didn't feel they wanted to do that and they could communicate their views orally, that is the way they could do it. By and large, that is the reason there were so few written.

Q Can I conclude by that you didn't want to reduce it to writing in Penn Central?

A I didn't feel it was necessary.

Q In spite of the fact you thought it was a unique structure or unique situation in terms of the credit worthiness.

A That's correct.

Q You indicated that you were in charge of the Credit Department, is that correct?

A Yes, I was.

Q But you were not the operating head of the Credit Department, correct?

A I was in charge of the Credit Department. I was not on the scene every day all day long in the physical location of the Credit Department.

Q That was Mr. Fakula.

A Yes.

Q He was the person in the office every day, is that right?

A Day-by-day supervision, yes.

Q And your office was on a different floor, is that correct?

A About three minutes away, yes. That's if I walked.

Q Faster than by elevator?

A We had an internal stairway. I used to go up three steps at a time sometimes for the exercise.

Q Did you indicate you don't recall the credit analyst assigned to Penn Central in August of 1968?

A Not initially. I do recall Evans was involved and then after that Bob Hoffman was involved.

Q If I indicated to you that you testified in the Franklin trial Mr. Evans was the credit analyst, would that refresh your recollection?

A Was the credit analyst?

Q Was the credit analyst assigned to Penn Central.

A I believe he was.

Q In August, '68.

A I don't recall having said that. If I did -- I just don't recall who was. It conceivably could have been him.

Q Who was the credit analyst assigned to Penn Central after Mr. Evans?

A I believe that in the transition from Evans it went to Hoffman, Bob Hoffman.

Q Did you ever request Mr. Evans to update the credit file or credit investigation on Penn Central?

A Mr. Evans did that daily. It was part of his job.

Q Excuse me.

A He did that daily. That was part of his job.

Q That was not my question.

Did you ever request Mr. Evans to update the credit file?

A I have never specifically said, "Please do your job." I expected that he was doing it, yes.

Q You don't specifically recall requesting him to do so?

A To do his job, no. I just assumed he was.

Q To update the file.

A He updated the credit file daily and that was his job and I made the assumption he did it. I had no reason to believe otherwise.

THE COURT: The answer has been made to say he never specifically asked him to do his job or to make, therefore, an updating.

Q Did you ever specifically recall asking Mr. Hoffman to update the credit file?

A I asked Mr. Hoffman at the point of time he became involved in the Penn Central to become as familiar with the Penn Central as he could. So to that extent, yes, I asked him to do something specifically.

Q To update?

A Update his knowledge of Penn Central.

Q Update the Goldman, Sachs credit file?

A Goldman, Sachs' credit file, as far as I was concerned, was updated. Now I was talking about a person. I assume that is what you are talking about.

Q I was talking about the specific question of Mr. Hoffman.

A I asked him, Hoffman, to update himself in terms of Penn Central.

THE COURT: This is not to say you did what Mr. Atlas asked. You did not ask him to update the file, you just asked him to update himself?

THE WITNESS: As far as I was concerned, the file was updated.

Q As far as you were concerned?

A Yes.

Q Let me ask you a mechanical question. If you wanted to see the Goldman, Sachs credit file, how would you go about getting it?

A There are any number of ways. I could go up and pick it out myself. I could ask for it. I could have it sent to me by someone. There were any number of ways.

Q Which was the way you usually obtained it? Did you usually go up to the Credit Department?

A Sometimes. I had no special way of getting it. Many times I would have it on my desk for three months, not that particular file, but any file.

Q Sometimes you had that file on your desk for three months?

A I am saying many times -- perhaps that is a long time, but there are many times I used to keep files on my desk for a period of time.

Q Wouldn't that present a problem for the credit analyst working on that file?

A No, he knows I have it.

Q In June, 1968, do you recall having requested the Penn Central credit file?

A Specifically requested it?

Q Yes.

A No, I do not.

Q Do you recall requesting the Penn Central credit file in 1969?

A No.

Q Do you recall requesting the Penn Central credit file during the first quarter of 1970?

A Not specifically, no, sir.

THE COURT: Am I to take it you just don't remember doing so?

THE WITNESS: That's right, your Honor.

THE COURT: That doesn't mean you did not?

THE WITNESS: Absolutely not. I just don't remember specifically on January 30th requesting the credit file.

Q I believe you testified on direct there came a point in time when you had an opinion as to the credit worthiness of Penn Central, is that correct?

A Would you repeat that, please.

Q Did there come a point in time when you first formed an opinion as to the credit worthiness of Penn Central?

A When I first formed an opinion, yes.

Q And that was when?

A In the summer of 1968.

Q Prior to the commencement of the issuance of the commercial paper?

A Yes.

Q What were the factors at that time that you considered in arriving at that opinion?

A Factors? Size of the company, the background information that I had about the economies and the potential profitability and things along that line that went with the merged railroad, together with my appraisal of the balance sheet, $6 billion balance sheet, and those various assets I mentioned earlier in the event it took longer for the economies and mergers to take place. Staying power. They had plenty of it.

Q Did you consider the earnings of the company?

A Yes, always.

Q You always considered earnings?

A You do it in any company. That's one source of possible cash flow, yes.

Q You considered the existence of bank lines at that time or available credit?

A I always considered access to credit. Sometimes that took the form of bank lines and sometimes not.

Q Did you consider the management of the company?

A To the best that I knew the management, yes.

Q Did you know the management of the company?

A Personally? I didn't meet them personally. I had other people's opinions.

Q Whose opinions did you have?

A I don't recall specifically who said what, but clearly they had people on the board from the Chase Manhattan Bank. I am talking about the management of the company. They had been with the railroad for a number of years. All that led me to believe I was dealing with honorable people.

Q Aside of the fact they were on the boards of various corporations, did you make any investigation as to the nature, quality and integrity of the management of the railroad at that time?

A Specifically?

Q Yes.

A No.

Q Do you know if anyone else did?

A I am certain we had views.

Q Excuse me?

A There was no question in my mind we were dealing with people of integrity. I did not go out and run --

Q What was the basis for that feeling there was no question in your mind?

A What was the basis for that feeling?

Q Did you know them?

A I didn't know them personally.

Q Did Mr. Levy know them?

A We had dealings with others in connection with New York Central.

Q Mr. Levy knew them?

A I believe he knew some of them. You will have to ask him.

Q Did you ask Mr. Levy as to the management?

A I don't recall asking him that specific question.

Q Did you consider the cash flow of the Penn Central in connection with your investigation?

A What do you mean by "cash flow?"

Q Their ability -- the available cash Penn Central had available to them.

A Did I consider the cash?

Q The cash flow of the company.

A Would you please tell me what cash flow is?

Q You don't know what it is?

A I would like you to tell me.

Q Can you define the term "cash flow?"

A Can I define it?

THE COURT: I don't think this is a game, Mr. Atlas. Tell us what you want to know from this witness when you use the term "cash flow." He wants to know if he has the same term in mind that you do.

Q Did you consider Penn Central's available cash on a daily operating basis or weekly, whatever the relevant time period is, in connection with your investigation?

A I viewed Penn Central's access to cash. Now, access to cash includes that which may accruse to the company via operating earnings, that which the company may have in terms of borrowing power, that which the company may have in terms of selling assets or borrowing against assets or pledging against assets. All of those factors. Once I arrived at the conclusion that within the context of all of those factors there was going to be in one fashion or another sufficient cash to meet on-going, on-coming obligations, then I considered it to be credit worthy. If that is a definition, that is the one I will have to give you.

THE COURT: You did not do, I take it, what some financial companies do in other situations, which is actually sit down and see how much cash the company is going to need next month for this and other things, how much they are going to take in on their receivables and all that; you did it on a broader scale.

THE WITNESS: Yes. I did not check expenses. That is their job as management.

Q Would a cash flow problem have caused you to make an adverse determination as to credit worthiness?

A If in my estimation of all the factors that I have outlined the company had a problem meeting their on-coming obligations, it certainly would have caused me to make an adverse recommendation.

Q Did Penn Central have cash flow problems?

A Not in the way I just defined it, no, sir.

THE COURT: You mean never or not at the time we are talking about?

THE WITNESS: Through the time that I was responsible for their analysis.

THE COURT: How long was that?

THE WITNESS: I am going back from the beginning up until the time frame this trial is involved with.

Q Mr. Vogel, I believe Mr. Maney on direct asked you about PX 35, which was a blue sheet dated September 3rd, 1969.

I don't know whether you have that in front of you.

A I have some blue sheets here.

THE COURT: 35.

THE WITNESS: I have it. Is it PX 35?

Q That's correct.

A Yes, I have it.

Q Is there any particular reason why Mr. Wilson didn't send a copy of that memo to you?

A You mean route it to me?

Q Yes.

A No special reason. We had a system whereby all memos written on commercial paper issuers were sent to me in an envelope. So whether I was an official designee on the blue sheet or not, I still saw it.

JK

Q In addition to the fact that Mr. Fekula saw it also.

A I'm sure he saw it because the envelope went from me upstairs, yes.

Q Excuse me, PAF, that's Mr. Fisher, isn't it?

A That's Pieter Fisher, yes.

Q Did the credit analyst receive a copy of this?

A This blue sheet? In the same manner that I just described.

Q After you saw it.

A That's right, via the envelope.

Q Did you discuss with Mr. Wilson his desire to ask Mr. O'Herron about the merger or the cash flow or the long-term financing plans of Penn Central?

A You mean -- are we referring to this blue sheet, what's covered in there?

Q Yes.

A I don't recall specific discussions. I'm sure we talked about the upcoming meeting.

Q But you have no recollection?

A Not of the subjects, no.

Q So you don't know whether Mr. Wilson asked O'Herron about the cash flow?

A You mean at the following meeting? My recollection is what would be in the blue sheet.

Q I believe we have indicated on direct that there was a meeting on September 11, 1969, is that correct?

A Yes.

Q And you attended that meeting?

A Yes, I did.

Q I believe your testimony indicated that Mr. O'Herron made a statement as to the very tight cash position for 1970, is that correct?

A I didn't recall specifically that statement. It would have to come from the blue sheet.

Q Would you direct your attention to Plaintiff's Exhibit 20. Does that refresh your recollection as to what Mr. O'Herron said?

THE COURT: Which day are we talking about now, Mr. Atlas?

MR. ATLAS: I believe that's the blue sheet dated 9/16/69.

THE COURT: We have jumped from 9/3 -- the one that is dated 9/19, I see, but which actually occurred on 9/11 and 12.

MR. ATLAS: Correct.

A I don't understand what is written in the blue sheet, other than the areas that I indicated earlier, I don't have any recollection. This is to the best of my knowledge what happened at the meeting. I just don't recall. There may have been other --

THE COURT: The last sentence. I don't think you are looking at the right page. It is the first page, the last sentence.

THE WITNESS: Other than the blue sheet, your Honor, is what I'm saying, I don't recall.

THE COURT: I understand that, but is there anything else in that blue sheet that you believe refers to the tight cash position?

THE WITNESS: I don't believe so, other than the fact that they were talking about a financing that was coming up in the fall or late winter.

Q Do you recall having asked, or anyone having asked Mr. O'Herron about that statement?

A All I can say to you is that my best recollection of what happened at that meeting is here in this blue sheet. I really can't go beyond the blue sheet in terms of memory.

Q So you don't recall?

A No.

Q Mr. Vogel, was Penn Central in the commercial paper market on a seasonal basis or on a continual basis?

A It was in the commercial paper market on a continuing basis, I believe, from July right through the period of this trial. That is true of many utilities, for example.

Q Let's go back for a moment to your credit investigation that you referred to.

Did you do any specific analysis of the

liquidity of the assets, the Penn Central assets?

A The liquidity? To the extent that I could get a market price of a marketable security, yes. That is what the market was telling me could be gotten, yes.

Q That is the extent of any liquidity consideration you gave?

A I don't know; what do you mean?

THE COURT: To me liquidity means the ability to convert an asset into cash rapidly.

THE WITNESS: Did I make an assessment on that? I thought there was more than ample assets in one form or another if it ever became necessary to meet the necessary cash requirements.

Q Did you make that type of analysis in connection with the ability to convert the cash quickly?

A Quickly?

Q Quickly.

A To my way of thinking, they had the ability to raise the cash they needed to meet oncoming obligations, whether it be -- I had no concern at that point whether it had to be made quickly, because there was no need to worry about whether it had to be made quickly or not.

THE COURT: You were dealing at all times with commercial paper which by definition, as I understand it, matures no more than nine months later, right?

THE WITNESS: I understand that, yes, your Honor.

THE COURT: So you were thinking in terms of paying that, not paying some bonds that would mature in 2050?

THE WITNESS: That's right. That's right.

THE COURT: So bearing in mind that you were considering some commercial paper, did you ever say to yourself, "Well," or how did you satisfy yourself that the assets were sufficient to pay -- I guess you mean pay on time, too?

THE WITNESS: Yes, exactly, timely payment, yes.

How did I satisfy myself?

THE COURT: Yes. I mean there is an implication of liquidi in deciding that somebody has enough money to pay something within nine months.

THE WITNESS: That's correct.

THE COURT: And will you tell us what your mental process was that satisfied you that the necessary cash would be there to meet those obligations within the time necessary?

THE WITNESS: I felt right along that -- in the first place, if you are talking about immediate liquidity, they obviously had the access to meet a commercial paper obligation. They obviously had the access of the stand-by lines, if we couldn't see the paper.

In addition to that --

THE COURT: I think we are talking more about the paper that was actually sold than the paper that wasn't sold.

THE WITNESS: The paper that was sold, right. In the event that that couldn't be sold or rolled over, so to speak, they had the factuality of the revolving credit allocated to that, so that in terms of, say, in the next 90 days whether they'd have cash, if in fact that was the only avenue, yes. I also felt over and beyond that, the time frame of roughly 60 to 90 days to take care of, if it ever became necessary, and I had no reason to believe otherwise, take care, if some of these steps had to be taken, assets had to be sold, money had to be raised on real estate, et cetera, that that was enough time frame to pick up whatever the immediate sources of cash wouldn't pick up.

THE COURT: Their real estate, for example, various items, at least in your opinion, were sufficiently valuable that if they had to they could have been mortgaged, let's say, they could have been sold, is that right?

THE WITNESS: Mortgaged. Actually you had tremendous -- for example, the Buckeye Pipe Line was worth considerably more than the loan they got, they had against it.

THE COURT: Yes, but you, I'm sure, would agree with Mr. Atlas' implication and mine, too, that to have something valuable doesn't always help you if you have to pay a bill tomorrow. You may own the Hope Diamond today, but if you can't sell it tonight, you can't pay your debt with it tomorrow.

THE WITNESS: I agree with that, but, as I say, I think the immediate tomorrow in terms of commercial paper, at least, was already provided for in the terms of committed bank lines, and I was fully convinced, based on my conversation with Bowditch, and my own appraisal of the assets, that those banks or other comparable lenders are seeing the same things I see, and if they want to go in and make a loan, they have valuable assets to provide the instant liquidity to meet a short-term obligation.

THE COURT: Thank you.

Mr. Atlas.

BY MR. ATLAS:

Q You spoke to Mr. Bowditch in connection with your initial credit investigation?

A Excuse me?

Q I believe you indicated you spoke to Mr. Bowditch; is that what you said?

A No. I was just citing that as one example. I spoke to Mr. Bowditch. All during the time I felt there were sufficient assets so that other sources of funds, either public or private, such as banks and in the case of the fall of 1969, here's the chief, the agent banks lending us, saying to me, "Okay, Penn Central, if you can't seel the paper, they have to go some place else and we will raise the revolver."

That's a source of cash.

Q I'm talking about the initial credit investigation. You are referring to a conversation?

A I did not speak to Mr. Bowditch at that time.

Q The conversation you are talking about is 15 months later, correct?

A In September, 1969 or thereabouts, yes, October.

Q In connection with the blue sheet dated September 19, of the meeting on September 11, there is a reference in there to Mr. O'Herron's request for you to extend the maturity dates of the commercial paper.

THE COURT: You say there is such a reference. What is your question?

Q I'd like to know whether you asked Mr. O'Herron about that statement?

A I don't recall.

Q You have no recollection?

A No, sir.

Q Do you have any recollection of anyone on behalf of Goldman, Sachs asking him about that?

A My recollection of that meeting is as it is.

Q Once again it is in the blue sheet, right?

A Yes, sir.

THE COURT: Would you show me the statement you are referring to, tell me where it is. I've got --

MR. ATLAS: The last sentence, your Honor. It may have been cut off on your copy, but he says, "John also pointed out that it could well be in a very tight cash" --

THE COURT: No, it isn't cut off. Then it says, "and asked if we could put out as much paper as possible." It doesn't talk about extending dates, unless you mean extending by putting out new paper.

MR. ATLAS: That's the question.

THE COURT: I thought you meant specifically extending the dates.

MR. ATLAS: No, extending the paper out beyond April.

Q You have no recollection of that being asked of

Mr. O'Herron either?

A I don't. Only what's been written in the blue sheet.

Q I believe you testified on direct examination that you performed a continuing and on-going credit investigation.

A Yes.

Q And did you have occasion to be in contact with the Penn Central officer?

A Occasion?

Q Did you have contact with the Penn Central officers?

A Yes, I did.

Q In connection with this credit investigation?

A Yes.

THE COURT: With whom?

THE WITNESS: The people -- those contacts are recorded in the blue sheets throughout the period.

Q So the totality of your contacts are reflected in the blue sheets?

A To the extent that I recollect them, yes.

THE COURT: Well, besides the blue sheets -- I guess the answer to this is no, but I want to be sure -- besides the blue sheets, was there such an arrangement as sometimes I know exists between bankers and customers, or people doing business with each other, that they have kind of regular conversations just to see if there's any news or how things are going?

THE WITNESS: Personally, I did not have regular conversations along the lines you are describing, but, for example --

THE COURT: Goldman, Sachs, Mr. Wilson, or who?

THE WITNESS: Bob Wilson, from time to time, talked, I'm certain. Pieter Fisher, who is the contact man for the Corporate Finance Department, had conversations, and our buyers who are buying the commercial paper on a regular basis would be talking on a daily basis.

THE COURT: All right. Thank you.

Q You indicated on direct examination the materials that you reviewed in connection with your credit investigation.

A Yes.

Q Did you ever have occasion, or did you ever talk to any Penn Central officers about those materials?

A Penn Central officers about the materials that I reviewed?

The only direct conversation that I can recall was, I was trying to ascertain -- I don't know that we are in the same time frame; what time period are we talking about?

Q I'd like to concentrate initially on the initial credit investigation.

You testified as to a number of materials that you examined. Specifically, do you recall having discussed with any Penn Central officers those materials?

A Directly, no, I do not recall.

Q At the time of this initial credit investigation or the time that Penn Central commenced the issuance of commercial paper, what was the percentage bank-line coverage at that time?

A Percentage bank-line coverage?

I believe it was 50 percent.

THE COURT: This is when?

MR. ATLAS: August of '68, I believe.

Q Is that correct, Mr. Vogel?

A I believe it was 50 percent, yes.

Q Were you aware that Penn Central participated in a revolving credit agreement?

A Participated in a revolving --

Q That may be a little confusing. Beneficiary of a revolving credit agreement; that there was a revolving credit agreement?

A There were actually two credit agreements at that time.

MR. MANEY: Can we establish a time on this?

THE COURT: Was he aware when?

MR. ATLAS: Any time frame, any period in the time frame we are talking about.

THE COURT: Did he ever know there was a revolving credit?

THE WITNESS: Initially there were two credit agreements.

MR. MANEY: What I don't understand is what time frame we are talking about.

Q Any time after August 1st, 1968.

A After August 1st?

THE COURT: Yes.

Q Until March 13, 1970.

A There was. One prominent one was the $300 million revolver.

Q That was the big one, correct?

A Yes.

Q That was a written agreement, correct?

A That's correct.

Q Did you review that written agreement in connection with your initial credit investigation?

A No, because that was in 1969. The initial one was through in August or July of '68.

Q Did there come a point in time when you did examine that document?

A By all means, yes, I did.

Q When was that?

A Sometime in the summer of 1969.

Q Was that when it was executed?

A No, that's the time we got a copy of it.

THE COURT: How does it relate to the time the loan agreement was actually executed?

THE WITNESS: I think the loan agreement is dated sometime in April. We knew the general outlines of the terms but we didn't have a physical copy of the agreement until sometime in the summer.

I don't believe they took the monies down until a little bit later.

Q What portion of the revolving credit agreement, if any, was available for commercial paper?

A What portion? There was a $50 million piece of the revolving credit agreement that was allocated specifically for the liquidation of commercial paper. Anything unused prior to that conceivably could have been used should they want to use it for that purpose.

Q Mr. Vogel, as of the end of 1969, December of 1969, is it not true that a substantial portion of the Penn Central assets had been pledged?

A At the end of 1969?

Q By the end of 1969.

A I think right along, most of the trackage and things of that nature, cars and things like that, were pledged, yes.

Q You were aware of that, correct?

A Yes.

Q Were other people at Goldman, Sachs aware of that?

A That the trackage -- yes, I'm sure they were.

Q About the pledging, substantial pledging of its assets?

A I'm sure they were, yes.

Q You told them, didn't you?

A I told whom?

Q You told other people at Goldman, Sachs about that?

A I think in the 1968 statement you had a footnote to that effect.

Q Is it your testimony you don't recall discussing that with Mr. Wilson.

A You mean the assets were pledged?

Q Yes.

A From time to time I discussed everything with Mr. Wilson. I don't recall specifically saying, this asset had that much pledge or that much pledge, you know, to this asset, no.

Q Did you make a specific investigation as to exactly what was encumbered in connection with each of those assets?

A To the extent that it was available to me, yes. It didn't really matter because I deducted all the debt in connection with it.

Q All the liens and all the encumbrances?

A That's right. Those assets that I used I just deducted.

For example, in the Pennsylvania Company a lot of the debt was pledged, some of the Norfolk stock was pledged to the $50 million debenture. In arriving at the value of that stock I deducted that.

Q All of the stock of the Pennsylvania Company had been pledged by that time?

A It was pledged to support the revolving credit, yes.

Q And the stock of the Pittsburgh and Lake Erie Railroad had been pledged as of that time, too?

A I believe some of it was, yes.

Again --

Q A substantial portion, wasn't it?

A I think it was a relatively minor portion of it.

Q Would you qualify that?

A I don't recall offhand; something like 15 or 20 percent.

Q That is all?

A In either case, any debt that I knew of ascribable to that, I deducted.

I don't remember --

THE COURT: What company are you talking about?

MR. ATLAS: That was the Pittsburgh & Lake Erie Railroad.

Q And you also knew as of that time that the Detroit, Toledo & Iron stock had been pledged, is that correct?

A I'm sure I did.

Q Did you make any specific analysis of the financial condition of the Penn Central subsidiaries?

A To the extent I was using them, I certainly looked at their earnings and to the extent that there was other information, I looked at that as well.

Q Did the Penn Central Transportation Company own Southwestern Oil and Refinery Company?

MR. MANEY: May we have a date on that, please?

Q At any point during 1969 or the first quarter of 1970?

A I don't believe the Penn Central Transportation Company owned that company, no.

Q Did they own Royal Petroleum Company during that same time period?

A I don't recall them owning that either.

Q So you would have no knowledge as to whether those companies would be subject to the issuance of a commercial paper?

A I certainly didn't use them in my appraisal.

MR. MANEY: I object. I don't understand what "subject to the issuance" means.

THE COURT: I'm not quite sure I understand the last question.

MR. ATLAS:, This could be used to back up the commercial paper, their assets, in terms of Mr. Vogel's credit --

THE WITNESS: I was not using them; I did not use those companies.

Q Do you recall meeting with Mr. Bevan and Mr. O'Herron on April 14, 1970?

MR. MANEY: Objection, your Honor. I take it the question -- I object, your Honor, no relevance to this case. It occurs over a month after.

THE COURT: I haven't an absolute rule. My rule is not that a matter is automatically excludable because it occurred after March 13. It may generally be, but not automatically.

MR. MANEY: Rather than interrupt Mr. Atlas, may I have a continuing objection?

THE COURT: Yes, of course.

When I hear what it is all about, maybe I will agree with you.

Do you remember when you met with them on April 14?

THE WITNESS: I know I met with them about that time.

I can't be specific about the date.

THE COURT: You met with Mr. Bevan and who?

THE WITNESS: And O'Herron. It was sometime in the Spring of 1970.

Q Would you take a look at Plaintiff's Exhibit 15, Mr. Vogel, and I ask you if that refreshes your recollection of that meeting?

A In the last sentence it said, "GLL arranged for" --

THE COURT: Don't tell me.

The question is whether that memo refreshes your recollection as to what occurred at the meeting.

THE WITNESS: Occurred at the meeting? No. Just that there was a meeting or a meeting was being set up.

THE COURT: I thought that was the question.

Q Do you recall Mr. Wilson asking Mr. Bevan if the New York City real estate and the New York City hotels were encumbered?

A Do I recall if he did?

THE COURT: Would you care to state why that is relevant as of April 14?

MR. ATKINS: I would like to establish, your Honor, as an offer of proof, that was the first time that they asked that question.

THE COURT: Then why don't you ask if they ever asked it before.

Q Prior to April 14, 1970, had Mr. O'Herron, or any other officer of Penn Central been asked if the New York

City real estate or the New York City hotels had been pledged or encumbered in any respect?

MR. MANEY: I object. Whether a Penn Central officer had been asked, by whom?

THE COURT: I take it he means by somebody with Goldman, Sachs.

MR. ATKINS: Correct, your Honor.

THE WITNESS: I have no --

THE COURT: I'm willing to allow you to pursue the line of inquiry, but I think the question is whether you had ever been asked before March 13. Do you remember?

THE WITNESS: I have no recollection. I didn't use those assets, so --

THE COURT: You didn't use it? By that you mean you didn't count on those --

THE WITNESS: Count them --

THE COURT: -- in reaching your determination; you didn't take them into account, or consider them?

THE WITNESS: As assets that could be borrowed against and things like that?

THE COURT: Right. I didn't mean that you didn't acknowledge their existence.

THE WITNESS: They were profitable.

Q You didn't consider those assets, you stated?

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A I wasn't looking at those assets as part of the aggregate of assets that I mentioned earlier.

Q I believe Mr. Maney asked you about Madison Square Garden on direct examination as an asset of the Penn Central Company.

A He mentioned hotels. I'm sorry, I'm just responding to that. You asked me about Madison Square Garden?

Q Do you know why Mr. Wilson would ask Mr. O'Herron about that?

MR. MANEY: Your Honor, I object.

THE COURT: Sustained.

Q On your direct examination, Mr. Vogel, I believe you mentioned bank lines were an element of the credit worthy determination, is that correct?

A They're not.

Q They're not an element of the credit worthy determination?

A Credit worthy determination is not geared to bank lines. That is an example -- bank lines are just another access to cash.

Q Is it your testimony that the existence of bank lines is not relevant to your on-going investigation as to the credit worthiness of Penn Central?

A No, I did not say that. Bank lines are important. The fact that banks have extended lines of credit is an indication of the willingness of those banks to do so. We used, for example, in preparing our information sheet, those banks as references that investors could look to.

We made checkings of those banks from time to time to determine what their attitudes were at that time. To that extent, yes, they're relevant. But not in the determination of whether or not the company is credit worthy.

Q Bank lines, in making a judgment on the credit worthiness of an issuer, bank lines are important, correct?

A They are not determinative as to whether a company is credit worthy.

Q But they are important, correct?

A They are not determinative. I can't answer it any other way.

THE COURT: We are having a fuss about this. Your view is that this is just another person's diagnosis of the situation, in effect?

THE WITNESS: No, it goes back to my original -- we are talking in terms of whether the company is credit worthy or not. I'm saying if a company is credit worthy, it will be able to get bank lines or bank accommodations. If it is not credit worthy, they won't get bank lines, so bank lines themselves are not a determinative.

THE COURT: In other words, bank lines are not a cause of credit worthiness. They are a symptom of it or a result of it.

THE WITNESS: Exactly.

Q Mr. Vogel, do you recall having been asked the following question and giving the following answer at the Franklin trial, on page 733:

"Q Now, you testified this morning about bank lines. Mr. Vogel, in making a judgment on the credit worthiness of an issuer, bank lines are important, are they not?

"A Yes, sir."

THE COURT: Would you read the question again, please? I'm sorry.

BY MR. ATLAS:

Q "Q Now, you testified this morning about bank lines. Mr. Vogel, in making a judgment on the credit worthiness of an issuer, bank lines are important, are they not?

"A Yes, sir."

Is your testimony any different today?

A I don't believe so.

Q Did Mr. Wilson play any role in the initial credit investigation?

A Play any role? He made the judgment, the final judgment as to whether we should take it on, yes, sir.

Q That is not really the same determination, is it. One determination is credit worthiness. The other determination is the decision to take the issuer on, correct?

A Or play a role. I've kept him informed. He was party to discussions, I'm certain. You know, I can't be specific in terms of actual events.

Q You definitely consulted with him in connection with the initial credit investigation?

A Very definitely.

Q And did you also consult with Mr. Pieter Fisher?

A I presume I consulted with Pieter. I don't recall specific instances.

Q You don't recall.

A I don't recall specific instances, no.

Q Now, Mr. Vogel, do the credit files and the blue sheets contained in the credit files contain confidential information?

A Confidential? That is a word. We have labeled blue sheets confidential. Some information may or may not be confidential and still be in the confidential blue sheet. We do that all the time.

Q Do the blue sheets and the credit file contain non-public information?

A I'm certain they do, from time to time, yes.

Q They do. And would you use the terms "confidential" and "non-public" interchangeably?

THE COURT: You mean would they in the sense did they do so regularly, or would he now do so as a matter of definition?

MR. ATLAS: I'm trying to understand what the witness means by his answer on confidential information.

A You mean as relates to an issuer?

Q Did the blue sheets and the credit files contain confidential information?

THE COURT: Confidential information -- let me suggest a definition, anyway, and I think maybe this is yours -- is information received in confidence.

THE WITNESS: And it also can mean -- I agree, your Honor. It can also mean discussions in a blue sheet vis-a-vis Goldman, Sachs' particular relationship with that company, which we don't want people going around spouting about.

THE COURT: Well, yes, of course, if it was

Goldman Sachs' information, it wouldn't have been received from somebody else.

THE WITNESS: It may be in context with the blue sheet.

Q It is certainly not the information you want to disclose to other parties outside Goldman, Sachs.

A The label of "confidential" is to alert other people that that memo shouldn't be laying around because there may be such information we wouldn't want to have disclosed.

Q Mr. Vogel, were you aware that their existed a policy of limited access to the credit files of Goldman, Sachs?

A Yes, sir.

Q And in the time frame we are talking about, did you know what the reason for this policy was?

A I knew of the policy. I didn't know specifically the reason.

Q When did you learn of the policy or when did you first learn of this policy?

A Right from the first day I was in the Credit Department, it was all word of mouth.

Q What is that policy?

A The policy was that there would be limited access to the credit files.

Q Who could see the credit files?

A Well, it was my understanding at that time that all partners, people in the Corporate Finance Department who were directly related to that particular file in some way, all the credit people, including myself, who were working on it, buyers of commercial paper.

Q Salesmen?

THE COURT: How is this policy applied? Was it expected to be self-enforcing in that those who knew they didn't have access to the files simply didn't try to look at them or did somebody have to come to you or somebody, and ask to look at them?

THE WITNESS: I wasn't in control of the files, your Honor. They were under the control of the librarian.

THE COURT: I see.

THE WITNESS: But there was a system employed by the two credit file clerks. If a non-partner and/or somebody they didn't recognize as being a corporate officer, asked for the file, they'd ask for identification and/or reason. Basically the security salesmen were not allowed to see the research people.

Q Salesmen were not allowed to see those files?

A Security salesmen, that's correct.

Q Did you ever give information from those credit files in the blue sheets to salesmen?

A Yes.

Q You were aware that Penn Central had made applications to the ICC in connection with raising the permissible level of outstandings, is that correct?

A I was aware of all the applications, yes, sir.

Q You were aware of those applications?

A Yes, sir.

Q Did you arrange for a credit check or an updated credit check on Penn Central in connection with those applications?

A Directly related to the applications?

Q Yes.

A We had an on-going credit investigation.

Q Were you asked to make any specific or special check on Penn Central in connection with those applications?

A Not that I recall.

Q You don't recall being asked to?

A No.

Q Mr. Wilson didn't ask you to perform any credit checks in connection with those applications?

A Not that I can recall.

Q Did you know that Mr. Wilson was giving an opinion to Penn Central in connection with those applications?

A I don't recall. He may have.

Q You don't recall that he gave an opinion?

A I say I don't recall. He may have. It would not be a-typical.

THE COURT: Mr. Atlas, just so I can do some planning, because I have some people upstairs, have you got much more to go?

If you do, I think maybe we will have to put it off until the morning. If you don't, I'd like to finish it now.

MR. ATLAS: I do have, I would say, about another hour, your Honor.

THE COURT: All right. Well, then we certainly won't be able to finish tonight.

MR. MANEY: Your Honor, we do have, as I understand it, just a half day tomorrow.

THE COURT: Yes.

MR. MANEY: Would it be possible to start a little earlier tomorrow, because we have one witness who should fit in about a half a day.

THE COURT: I think so.

MR. MANEY: But I hate to have it held over till Monday.

THE COURT: All right, let's start 9:30 tomorrow morning.

MR. MANEY: Thank you, your Honor.

THE COURT: As I say, if I thought we could finish in another couple of minutes, I'd say let's continue, but that's clearly not possible.

Thank you very much. I will see you at 9:30 in the morning.

(Adjourned to 9:30 a.m., October 31, 1975.)

gwmch 1 Vogel-cross

UNIVERSITY HILL FOUNDATION

v. 71 Civ. 1166

GOLDMAN, SACHS & CO.

October 31, 1975
9:30 a.m.

(Trial resumed)

(In open court)

JACK A. VOGEL, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. ATLAS:

Q Mr. Vogel, were you aware that there existed a requirement that Penn Central use the proceeds from the commercial paper sales for current purposes?

MR. MANEY: Objection, your Honor. It assumes a legal conclusion contrary to the evidence, contrary to the law. It assumes a fact contrary to the evidence.

THE COURT: Mr. Atlas, I am not quite clear myself as to what the status of the concept you just articulated is, whether it's a matter of law, whether it's a matter of good accounting practice, whether it's a matter of assumption, this, that and the other. I would prefer you ask this witness whether he understands that that's the fact and, if so, what knowledge he has of it, and so on.

Have you got something to enlighten me, Mr. Breindel?

Q First let me ask you, Mr. Vogel, to look at Plaintiff's Exhibit 84 and tell me whether you have seen this document before you. I would like to address your attention to the second page of it.

A Excuse me? Second page?

Q Yes, the second page of that document.

THE COURT: Have you seen the document before?

THE WITNESS: No, I have not seen it before.

A Where it says "features and related benefits"?

Q Under the "Education Division of Xerox Corporation," second paragraph.

A I have that.

MR. MANEY: Does your Honor have a copy of this exhibit?

THE COURT: No.

MR. MANEY: I believe the document on its face shows it it totally irrelevant to the case.

THE COURT: All that happened so far is he has asked Mr. Vogel to look at it. I don't know what the question is going to be.

Q Have you looked at it?

A Yes.

Q Is it your understanding that there existed an obligation or requirement on Penn Central's part to use the proceeds from the commercial paper sales for current transactions, for current purposes?

A It was my understanding that the commercial paper issued by Penn Central was approved by the Interstate Commerce Commission. I did not know that that related to current transactions, but if that's a problem to you, there are at least three hundred --

THE COURT: It is not a question whether it is a problem to anybody. It is a question of what you understood the facts to be at the time.

Will you tell me what you did? Let's not get complicated about it. Did you understand the proceeds of the commercial paper were to be used for current payments as distinct from other purposes? I ask you whether you knew it was to be used for that purpose.

THE WITNESS: I did not understand it was to be used for that purpose.

Q You did not understand it to be an obligation on Penn Central's part?

A Are you talking about a legal obligation?

Q Any obligation.

THE COURT: I am asking it at a lower threshold than that. I am asking whether you understood, legal obligations aside or anything else, it was to be used for current purposes.

THE WITNESS: There was no question in my mind that it could be used for current purposes and there were current purposes for it to be used. I did not inquire as to what current purposes they used it for.

THE COURT: Did you understand it would be used exclusively for current purposes, or did you understand the question -- let's get down to the bottom of the barrel for this kind of inquiry.

Did you understand that the commercial paper proceeds were to be used for any particular kind of purpose as distinct from any other purpose?

THE WITNESS: For general capital working purposes.

Q Do you know, Mr. Vogel, that the Penn Central told the ICC that it was using the proceeds of commercial paper for current purposes?

THE COURT: Naturally that is subject to connection.

THE WITNESS: It's entirely possible.

Q Did you know it?

A I don't know offhand.

THE COURT: You don't recall whether you knew it?

THE WITNESS: I don't recall that specific comment to the ICC.

Q Did you ever ask any officer of Penn Central as to how it planned to use the commercial paper proceeds?

A No, I did not.

Q Do you know if anyone else at Goldman Sachs ever did?

A Not to my knowledge.

Q Mr. Vogel, did there come a point in time when you learned that the Continental Insurance Company had removed Penn Central from its approved list of issuers?

A I don't recall if I did or I didn't.

THE COURT: Continental Insurance, you say?

MR. ATLAS: Continental Insurance Company.

Q Mr. Vogel, I would like to show you Plaintiff's Exhibit 42 and ask you if you have ever seen that document before.

A I don't remember specifically seeing this document. I may have. I just don't recall.

Q You don't recall having seen that document?

A No. I may have.

Q Who is Mr. Morris?

A He was a salesman.

THE WITNESS: Am I speaking loud enough?

THE COURT: You are doing better than yesterday. We will take anything you can give.

Q Mr. Morris was a salesman for Goldman Sachs?

A Yes.

Q As I understand your testimony, you have no recollection of the Continental Insurance Company dropping Penn Central from its approved list; is that correct?

A That's correct.

Q And you have no recollection of having read that memo?

A I don't have a recollection, no.

Q Do you have any information or knowledge of anyone at Goldman Sachs attempting to contact the Continental Insurance Company?

A Not to my knowledge. There may have been.

Q Did there come a point in time when you learned of Mr. Cox' statement in the newspapers as to the rough time that Penn Central was having after the merger?

A Did there come a time?

Q Yes.

THE COURT: Did there come a time when Mr. Cox made such a statement?

MR. ATLAS: When Mr. Vogel learned of Mr. Cox' statement.

A I probably was aware of the substance. I don't remember it being ascribed to Mr. Cox or anyone else.

THE COURT: Did you know who Mr. Cox was?

THE WITNESS: I know now he was counsel for the railroad.

Q Do you know who Mr. Cox is?

THE COURT: Now he does, he says.

Q You didn't know then?

A No.

Not that I didn't know then. I don't recall specifically. I know I was aware of the problems, the woes and so forth of the railroad, their earnings problems, and so forth.

THE COURT: As of what date were you questioning?

Q In or about November of 1969 you didn't know that?

A I don't recall specifically the article you are referring to.

Q Would you look at Plaintiff's Exhibit 28. I ask you if that refreshes your recollection.

A Not particularly.

Q That does not refresh your recollection?

A No.

Q Is that a blue sheet?

A Yes, it is.

Q Have you read all the blue sheets?

A Yes, I did.

Q And do you know whether that memorandum came to your attention on or about November 10, 1969?

A I am sure it did.

Q You are sure it did.

Do you have any recollection of attempting to contact Mr. Cox in connection with those statements?

A I don't have any recollection, no.

Q Do you have any knowledge or recollection of anyone else at Goldman Sachs attempting to contact Mr. Cox?

A Not to my knowledge.

Q Mr. Vogel, did there come a point in time when you learned that Brown Bros. Harriman had removed Penn Central from its approved list of issuers?

A I don't recall if I did or I didn't.

Q You don't recall?

A No.

Q Can you identify Brown Bros. Harriman?

A It's a banking firm.

Q A banking firm?

A Yes. They were one of the line banks for Penn Central.

Q Are you aware if they had any specific expertise in railroad operations?

A Specific? I think Mr. Harriman of the Brown Bros. Harriman was a railraod man, but as far as specific expertise, I don't have any recollection.

Q Isn't it true, Mr. Vogel, that Brown Bros. Harriman was known for its concentration in the railroad industry?

A I can't answer the question. I am really not aware of it.

Q You don't know that, correct?

A That's correct.

Q Then I can assume, not knowing about the Brown Bros. removal, you didn't take any steps to inquire as to the reasons for it?

A Whether I knew or not, there are probabilities I wouldn't have to take steps. That happened all the time.

Q But you don't recall?

A I don't recall exactly.

THE COURT: Would you amplify what you mean when you say it happened all the time?

THE WITNESS: Many investors removed names regularly for whatever reason. If, for example, our salesmen came back and said, "Brown Bros. Harriman thought this was not a creditworthy name and therefore we are going to eliminate all our relationships," then I would have been on the horn with somebody, but the physical fact that Brown Bros. or anyone else either removed or didn't remove a name, there are so many reasons, concentration in a specific name.

THE COURT: Or a specific industry?

THE WITNESS: Any number of reasons which are totally unrelated to "creditworthiness."

Q Mr. Vogel, may I ask you, do you have the document that Mr. Maney prepared which is the accumulation of the blue sheets in front of you?

A I don't have it now, no.

Q I think this will prove helpful (handing).

I ask you to direct your attention to Plaintiff's Exhibit 12, which I believe is the blue sheet dated February 6, 1970.

THE COURT: What date?

MR. ATLAS: February 6, 1970, Plaintiff's Exhibit 12.

A I have it.

Q You have that in front of you?

A Yes.

Q And I believe you indicated previously that that contained important information; correct?

A Yes.

Q When did you read Plaintiff's Exhibit 12?

A On or about the 6th.

Q That is the day you would have received it; is that correct?

A Yes. I can't be specific. It was the 6th, 7th, 8th or 9th, but on or about that date.

THE COURT: Could somebody furnish me with a copy of that compilation? I think I returned my copy to you yesterday.

(Document handed to the Court)

Q Did you say it was possible you may have received this as late as February 9th?

A I am saying I don't recall specifically the date that I received it.

Q Did you make any inquiry of any Penn Central officials regarding anything that was discussed at this luncheon meeting?

A Later on, in terms of the --

Q At or about this time of February 6th.

A No.

Q I believe you also indicated in your direct examination that this particular blue sheet contained information that was very positive?

A Yes.

Q Would you explain to me how the projected $56 million loss for 1970 was positive?

A Let's put it in context with the total blue sheet, and I will explain how it was positive. We were looking --

Q The question I would like you to answer, Mr. Vogel, is did you consider the $56 million loss in 1970 to be positive?

A That specific by itself, that's a negative.

THE COURT: Let me say something that may save time.

You are perfectly at liberty to cross-examine Mr. Vogel about this material. All that I understood him to say yesterday was that he concluded that in spite of the negative factors of Penn Central's situation this was positive because it showed Penn Central was going to do something about it.

THE WITNESS: That's correct. Exactly.

THE COURT: If you want to cross-examine him even though -- well, if you want to cross-examine him as to that, go ahead.

Q Mr. Vogel, isn't it true that in many other instances prior to February 6th Penn Central made representations to Goldman Sachs it was going to do something?

A That it was going to do something?

Q That it was going to take some steps to rectify its problems?

A Yes.

Q And that these representations were made prior to February 6th; correct?

A They had told us many times they were going to do certain things which they did, yes.

Q And many things which they didn't do?

A I am not aware of those things they told us they would do and they didn't do.

Q Was it a positive note to you, Mr. Vogel, that Mr.Bevan and Mr. O'Herron, who are very senior officials at Penn Central, told you they could not get $100 million in bank lines in Feburary 1970?

A In the context of those times, the tight money market, it certainly was not an unusual comment.

Q It wasn't surprising to you whatsoever?

A No, not in the context of the tight money times.

Q Do you know if it was surprising to Mr. Wilson?

A Pardon me?

Q Do you know if that was surprising to Mr. Wilson?

A I can't answer for him. I take it his feeling was the same as mine.

Q Do you think it positive a large investment banker had removed them from its approved list of issuers?

THE COURT: Which banker?

MR. ATLAS: The blue sheet refers to a leading New York City banker, I believe. That was my reference earlier.

THE COURT: Will you draw my attention to it?

MR. ATLAS: I believe it is Page 2 of that blue sheet, fourth line down.

THE COURT: Would you look at that, Mr. Vogel. "I told him about a large New York firm."

Is that what you mean?

MR. ATLAS: Yes, your Honor.

THE COURT: Did you consider that statement positive?

THE WITNESS: The statement was referring, as we had been right along, to the marketability of the notes. This was telling the railroad that "Here is one instance where your notes are not going to be purchased temporarily by someone."

I think it was all part and parcel of our advice, sound financial advice, to the railroad. That to me was a positive statement.

Q That was a positive statement that they removed

Penn Central from its list?

A I think it was a positive sound business advice to tell them that and that they would recognize that this was the case. That's a positive.

THE COURT: It may be positive to tell them that. I take it you didn't think it was positive they had been removed from the list?

THE WITNESS: That is pretty much what we were trying to tell the railroad, "You are facing the prospect of having some of your paper run off. Here is one example."

Q Also, you indicated in your direct examination yesterday and indicated in Plaintiff's Exhibit 12 that Mr. Rogers had agreed to continue the prime rating, the NCO prime rating, as long as Goldman Sachs continues to act as dealer; is that correct?

A I never said that.

Q You didn't say that?

A No.

Q You didn't say that Mr.Rogers had agreed to continue the NCO prime rating as long as Goldman Sachs continues to act as dealer?

A Mr. Rogers didn't agree with me to do anything.

Q Did Mr. Rogers make that statement?

A Mr. Rogers did not agree to continue the prime rating with me because Goldman Sachs was continuing to sell the paper. All I said was that --

Q Was it Mr. Rogers' feeling --

MR. MANEY: I object to the interruption of the witness' answer.

THE COURT: Please let him answer.

A All I said was in view of the fact we are going to continue to offer the paper, then NCO was going to be in the position of having to rate it, and at that time they were still rating it prime. There was no agreement between Rogers and I their continuing the prime rating.

Q It is your understanding Mr. Rogers had just continued to agree to rate it?

A Until I heard otherwise, that's right.

Q Not rate it prime, just rate it?

A Rate it.

Q When Mr. Wilson prepared Plaintiff's Exhibit 12, the blue sheet, when he referred to the prime rating, did you make an effort to correct that statement in the blue sheet?

A No, I did not.

THE COURT: Excuse me. Correct what?

MR. ATLAS: The statement that Mr. Wilson made in the blue sheet at approximately Line 9, 7 through 9.

THE COURT: I see.

Q Now, at this meeting --

THE COURT: Let me ask you this: As to those lines there, do you now find that they correctly stated what you understood to be the facts, or are they incorrect?

THE WITNESS: Your Honor, I would have totally rather have different phraseology than what was there, but we did not know we were going to be involved in this kind of action and he and I both understood what I meant.

THE COURT: "He and I" meaning --

THE WITNESS: Bob Wilson.

THE COURT: I am now asking you whether you think, putting aside the question of preferring different language, whether this statement is substantially correct or is not correct, or is inaccurate, or how would you describe it?

THE WITNESS: In terms of the inaccuracies, the inference you can draw from that line is different from what was intended. The prime rating, as far as we knew it from the date of my conversation, was still a prime rating. It didn't necessarily follow that three days later, upon their continued investigation, they wouldn't drop that rating, but at that moment of time Al and -- I would have indicated to him, if he said to me, "Jack, we are going to drop the rating on the basis of everything I know," that type of information would have been in my blue sheet.

Q Mr. Vogel, at this same meeting which is reflected in Plaintiff's Exhibit 12, Mr. Bevan made reference to budgets, budget planning, is that correct? I direct your attention to the first paragraph on Page 2 of that blue sheet.

A Yes, I see.

Q Did you ask to review those budgets?

A No, I did not know.

Q Do you know if anyone else at Goldman Sachs did?

A Not to my knowledge.

Q Did you also attend the meeting on December 9, 1969, with Penn Central officials?

A I attended the meeting in December, yes.

Q I direct your attention to the blue sheet dated December 9, 1969, which is Plaintiff's Exhibit 22.

I believe you have it in front of you.

THE COURT: When we find it, we do. The trouble is the numbers don't correspond with the chronology.

A I have it.

THE COURT: So do I.

Q I believe in that blue sheet there is a reference to the fact that Penn Central had 50 percent bank line coverage at that time. Is that correct?

A Yes, I see it.

MR. ATLAS: That is the tenth line down, your Honor.

Q Did that percentage ever increase at any point after that?

A I can't be absolutely certain. There may have been points of time in there when it did.

Q It did increase?

A Yes. I am not so sure, but some of the facilities, the bridge loan facilities, were still open and unused and theoretically could be considered part of bank lines.

Q Do you have any information, any specific information, as to the bank lines' increase, percentage?

A The percentage to commercial paper?

Q The percentage of bank lines, did they exceed 50 percent?

A 50 percent is pretty much what it was.

(Continued on next page)

Q And it's true that time that you stated that some investors, at least, were investing upon 100 percent bank line coverage, is that correct?

A That's correct. An increasing number.

Q An increasing number?

A Yes.

Q And you felt that the 100 percent bank line coverage, as per Mr. Wilson, was important, right?

A From a marketing standpoint, very definitely.

Q It certainly was apparently becoming important to investors, correct?

A Yes. That's correct.

Q And you suggested to Penn Central that it increase the bank line coverage to 100 percent, correct?

A That's correct.

In that context, I was pointing out the marketability features.

Q Did you ever suggest to Penn Central at a subsequent time that they increase their bank line protection to 100 percent?

A Personally? I don't recall, but I may very well have.

Q You may have?

A Yes.

Q What is a green sheet, Mr. Vogel?

A Green sheet? It's a sheet that we prepare in between the yellow sheets and the white sheets in a given year.

Q What is the purpose of a green sheet?

A Purpose?

Q Purpose.

A By and large, it's the analyst's judgment as to what additional information an investor might find some interest in.

Q So the green sheets are prepared for the investors, is that correct?

A That's correct, yes.

Q And are green sheets given to --

MR. ATLAS: Strike that.

Q When are green sheets given to investors?

A When are they? When a note is purchased by an investor, a confirmation of that purchase goes out, and whatever information Goldman Sachs has published up to that point, yellow sheets, white sheets and green sheets, are sent out at that time.

Now, in other instances, a lot of the major investors, for example, would get the yellows, greens and whites well ahead of time so they could set up their approved lists.

Q For the most part, for the average investor, the green, white and yellow sheets arrive at the confirmation of the commercial paper purchase, is that correct?

A I don't know what the average --

MR. MANEY: Objection to "average investor."

THE COURT: I don't think it's very meaningful to us. For the most part, most investors.

Q For the most part, is that correct?

A I'd say more investors than not, yes.

Q Get that information with the confirmation?

A Right.

The salesmen, incidentally, have that particular information at their desks when they're making their sales, so it can be transmitted that way as well.

Q But not the information contained in the blue sheets, right?

A Not the blue sheets, no.

Q Was a green sheet prepared for the 1969 earnings of Penn Central?

A 1969 earnings? I believe it was, yes.

Q Do you know when it was prepared?

A I'd have to refer to the green sheet. Shortly after they were announced, I'm sure.

Q Was it right after the announcement, you said?

A I'd say sometime shortly after the announcement, yes.

Q What is the normal practice of Goldman Sachs in issuing a green sheet containing year-end earnings?

A Well, we prepare a green sheet and we give year-end earnings. That is the normal practice.

Q Mr. Vogel, I show you Plaintiff's Exhibit 45, and ask you if that aids you in determining when the green sheet was given to investors.

A The date of the green sheet is February 18th, yes.

Q Does that refresh your recollection as to when that green sheet was prepared?

A Yes.

Q Do you know --

THE COURT: Because of the artificialities of the law, nobody has asked you whether this is the green sheet itself. Is this what we're talking about?

THE WITNESS: It's the green sheet itself. I can tell by the top part.

THE COURT: All right.

Q When did Goldman Sachs learn of the 1969 earnings of Penn Central?

A Somewhat earlier than this.

Q When?

A I don't recall specifically. On or about the 5th, I guess, or 6th, whenever they were announced.

Q On or about the 5th of February?

A Right.

Q Any particular reason for the 13-day interval between the knowledge and the preparation of the green sheets?

MR. MANEY: Your Honor, I object to the relevance of this inquiry. We are talking about a purchase in mid-March where this green sheet was not even involved in the transaction. I can see absolutely no relevance to this line of inquiry.

THE COURT: I can, Mr. Maney. I think that the general method of informing the public or the investors is of some at least peripheral relevance.

Do you know why it took between February 5th and February 18th to put out a green sheet on this subject?

THE WITNESS: I can't answer the question, your Honor. I just don't know. There was no particular reason, one way or another, unless we didn't have all of the things that appeared in this green sheet earlier. That would be the only reason.

THE COURT: Who would have prepared this green sheet?

THE WITNESS: This would have been done in the credit department, your Honor.

Q You were in charge of the credit department, correct?

A Yes, sir.

Q Were Goldman Sachs salesmen instructed to read that green sheet to prospective customers?

A Not to my knowledge.

Q Is that an ordinary direction to the salesmen?

A Ordinary?

Q Is that a usual direction to salesmen, to read a green sheet to investors?

A No, it was not.

Q What is the criteria in determining whether a green sheet such as that should be put out, should be issued?

A It would be up to the analyst to make that determination, whether he felt that that information might be of interest to some investors.

One of the many times -- for example, investors would say, "Gee,my boss came in and told me there was a bond deal, and I had nothing from you fellows on that particular bond deal," so that would be one -- sort of public relations value.

Q Would materiality be an element?

A I don't know what you mean by "materiality."

Q The purpose of the green sheet, as I understand, was a form of disclosure; is that correct?

A A form of reporting things of interest to investors, yes.

Q Who made the determination as to whether that would be of interest to investors?

A By and large the analyst, whoever happened to be handling that particular account.

Q Would he consult you?

A From time to time, yes.

Q Did he consult with you about that green sheet?

A This particular one, I believe I was a party to the writing of it.

Q Were there any written guidelines as to how Goldman, Sachs credit analysts performed their duties?

A No.

Q Was there any training program for credit analysts during 1968?

A We got our credit analysts out of banks, where they have had enough training experience, so to speak.

Our analysts all had one or two years' experience before they came to us.

Q I don't think that was my question.

Did Goldman, Sachs have a training program for credit analysts in 1968?

A On-the-job training, yes.

Q Other than that?

A Our analysts came to us trained. They were trained on the job in Goldman, Sachs.

Q Any specific training program other than just working in the credit department?

A No.

Q Did they have any specific training program other than working in the credit department during 1969?

A Not to my knowledge.

Q During 1970?

A Not to my knowledge.

Q At least the first quarter of 1970?

A Not to my knowledge.

Q If it wasn't to your knowledge, would it exist?

A It's entirely possible. I don't know.

Q It's possible that there would be a training for credit analysts that you would not be aware of?

A I'm sorry, I misunderstood your question.

If there was one for credit analysts, I would have known about it. We had other training programs from time to time in the firm.

Q Other than the commercial paper department.

A Yes. Just announcing what different departments do, that sort of thing.

Q My questions are confined to the credit department.

How many issuers of commercial paper did Goldman, Sachs represent?

A How many? Approximately two hundred plus.

Q Could it be three hundred?

A Not in any one time, in the market.

Q Have you read -- did you read the commercial paper report prepared by Mr. Wilson?

A Which report was this?

Q I think that is the one that was prepared as of March of 1970.

A I'm sorry, I don't even -- I don't have a clue as to what you are talking about.

Q I believe it's referred to as the blue book, Mr. Vogel, Plaintiff's Exhibit 75.

THE COURT: Let him look at it.

A I did not ever read this, but I do know that it was in preparation and one was prepared.

Q You never read this?

A I never read this, no.

Q Could I direct your attention to Page 3, No. 5. Do you see that, Mr. Vogel?

A Yes.

Q If you had read the blue book, would you have disagreed with that statement as to three hundred issuers?

A I don't disagree with the statement of three hundred. I don't think we ever had three hundred in the market at any one time.

We have a list of companies that we at one time or another handle, which probably approached three hundred.

Q How many issuers of commercial paper did each analyst have to follow?

A Depending on the number of analysts, anywhere from forty to sixty or so, thereabouts.

Q That's for each analyst?

A Yes.

Q And he would have primary responsibility for following that company; is that right?

A Updating the files, yes.

Q Now, are you aware that purchasers, potential purchasers or existing holders of commercial paper, were told by Coldman Sachs of Penn Central's inability to obtain $100 million in bank lines?

A I'm not aware of it.

MR. MANEY: Objection, your Honor.

THE COURT: Well, that question, as phrased, seems to assume it was so. If you want to say "do you know whether" --

MR. ATLAS: That was my intent, your Honor.

Q Do you know whether Goldman, Sachs told that to investors?

A I have no -- not personally, I did not. I don't know whether anyone else may have.

Q You have no knowledge of whether anyone else did?

A No.

Q Is the ability to obtain bank lines an element of creditworthiness?

A No.

Q The ability to obtain the lines?

A If you are creditworthy and in normal money markets, you should have the ability to obtain credit lines, yes.

Q I think that's a bootstrap argument, Mr. Vogel.

My question is, the inability to obtain bank lines, would that be a factor in any way in the creditworthiness?

A If the inability to obtain bank lines was purely on credit reasons, yes.

Q So tnen at least an investigation would have to be made as to why they had that inability to obtain bank lines, correct?

A Not necessarily. You investigate the financial statements and things of the company, and if you make that, draw the conclusion it's creditworthy, I don't think you have to investigate it further, the further aspect of it.

In any event, they had the ability to do so if they wished.

THE COURT: Who had the ability?

THE WITNESS: The investors. We gave them a list of bank references that they could have talked to, your Honor, if they felt they wanted to clear that point up.

Q When did you give them this list?

A On the yellow sheets and the white sheets there were a long list of bank references.

Q On how many occasions did you provide investors with these bank lists?

A The list of banks were on every yellow sheet, every information sheet that went out to investors, as well as the white sheets.

Q Green sheets?

A Not on the green sheets, no.

Q Who did the bank checkings for Goldman Sachs?

A Who did it? The credit department.

Q Who, specifically?

A Any one of the analysts. We used to hire people, college graduates, to do it in the summer.

Q Isn't it a fact that the summer students employed by Goldman Sachs did the bank checkings?

A For the most part, yes.

THE COURT: What do you mean by the bank checkings?

MR. ATLAS: Checking with the bank -- excuse me.

Q What do you mean by bank checkings, Mr. Vogel?

THE WITNESS: Your Honor, what a bank checking means is that we would get lists from all of our issuers of their various banks. One of our analysts or one of our summer employees would call the bank --

THE COURT: To verify?

THE WITNESS: -- verifying that the line existed, what the bank's attitude towards that particular credit was, what sort of usage was being made under the lines, and so forth.

THE COURT: I see.

Q You indicated that it was the summer students employed by Goldman Sachs who did these bank checkings?

A For the most part, yes.

Q Did the NCO rating have marketing value to Goldman Sachs?

A It had marketing value in the sale of the paper, yes. Investors look toward the NCO rating.

Q Mr. Vogel, what credit evaluation techniques, if you know, are used by other commercial paper dealers?

A The direct techniques? I'm sure they serve, use the same information I do. Exactly their application, I can't say.

Q You don't know?

A No.

Q Did you ever discuss credit evaluation techniques with any other credit men for other dealers?

A There was almost no contact between dealers, any dealer and ourselves, and vice versa.

Q Mr. Vogel, on direct examination yesterday, I believe you indicated that the credit analysts had the authority to make recommendations in connection with the issuers; is that correct?

A Yes, they did.

Q Did they usually do so?

A Sometimes.

Q Did they do it in writing?

A Sometimes.

Q Where would those writings be?

A They'd be in the file.

Q Credit file?

A Yes.

Q Did any credit analysts assigned to Penn Central make any written credit evaluation recommendations?

A There were annual reviews written by the credit analyst.

Q Aside from the two annual reviews that have been discussed so far?

A Not to my knowledge.

Q So, to your knowledge, there were no other written documents by any credit analyst of Penn Central in that credit file; is that correct?

A That is a very encompassing statement.

There may have been other things, documents written or prepared by credit men in that file.

Q Recommendations or suggestions?

A Not to my knowledge. Recommendations, not to my knowledge.

Q Yesterday, when you were being questioned by Mr. Maney, I believe, as to your evaluation of the assets of Penn Central, you testified that you valued the securities of a public company at their market price; is that correct?

A Yes.

Q If such securities were necessary to satisify maturity of commercial paper, and if a large block of stock was placed on the market, is that the price that that stock would be sold at?

A Oh, I don't think I was saying that at all. I think that if you've got tangible assets that has a value, this is what the market says the value is. If they're not sold, they can be taken to someone and pledged and borrowed against.

Q What I'm saying, Mr. Vogel, I was inquiring as to your statement yesterday.

Is the market price of those securities necessarily true value of those securities?

A It's the value of the market. It was the only real, true measurement I could make at that point.

Q From your experience as a financial man, as a credit man, it would be evident to you that that might not be the true value; is that correct?

A It could be higher.

Q It could be higher.

You worked at the Grace National Bank before coming to Goldman Sachs?

A Yes, I did.

Q How would a bank treat those securities in terms of a loan? Would they give a customer a loan up to the full value, full market value of those securities?

A I think there's probably some margin requirement or something of that nature, yes.

Q It would be less than a full market value, wouldn't it, Mr.Vogel?

A Undoubtedly, yes.

Q You also testified yesterday that with respect to non-public companies you used a computation of ten times earnings; is that correct?

A That's correct.

Q Is that the way a bank would have valued a non-public company?

A I presume they would have done it.

Q Is that the way Grace National Bank would have done it?

A I don't recall Grace National Bank's policy today, in terms of how they would value that. That was, to my estimate, over a period of years, a very conservative valuation. Grace National Bank may be going fifteen times.

Q Fifteen times?

A It's entirely possible; depends on the industry and so forth.

Q Do you have any knowledge of that?

A I just don't have any recollection of the exact numbers. That was what I considered to be a very conservative number.

Q Isn't that what you did when you were at Grace National Bank, exactly those types of computations?

A Depended on the subject matter I was dealing with.

Q And you further testified yesterday that you worked on the initial credit investigation, I believe, for a period of six to eight months; is that correct?

A Yes; yes, sir.

Q Did you prepare any written documents in connection with that work?

A No, I did not.

Q No written documents prepared during that six to eight-month period?

A No.

Q What was the purpose of blue sheets, Mr. Vogel?

A Record conversations of substance with management, essentially of the company's contacts of substance relating to that company.

Q With management of the issuer?

A Issuer. There could have been other purposes, other people.

Q Other people?

A But contacts of substance as relates to that particular issuer. Mostly, it was with management.

Q Conversations outside of Goldman, Sachs, is that correct?

A It could have been held anywheres, outside of Goldman Sachs, inside, whatever.

Q I mean conversation with people outside of Goldman Sachs?

A Yes, yes.

Q Was it normal that a telephone call with NCO would be contained in a blue sheet?

A Not normal, not abnormal; depends.

Q Were there any other NCO blue sheets other than the Plaintiff's Exhibit 10 which was your conversation with Mr. Rogers on February 5th?

A There may have been. I don't recall any.

Q You don't recall any others?

A No.

Q But you did talk to Mr. Rogers many times, didn't you?

A Yes.

Q Any particular reason why you selected this one specific telephone call to reduce to a blue sheet?

A I can't recall anything specific, except it was a $200 million issuer. I would gather that that --

Q But you spoke to Mr. Rogers on other occasions about Penn Central, you said?

A Yes, I'm sure I did.

Q That was the only blue sheet, only conversation you reduced to the form of a blue sheet; right?

MR. MANEY: Objection, your Honor. This is a misleading line of questions.

THE COURT: Have you had other conversations -- had you had other conversations with Mr.Rogers about Penn Central over a period of time?

THE WITNESS: I'm certain I did, your Honor. I just don't recall them.

Q Now, I understand from your testimony yesterday, in describing the efforts you did in connection with the credit investigation, that you would be maintaining a continuing analysis of Penn Central with continuing computations; is that correct?

A That's correct.

Q Did you do a new analysis each time?

A Oh, no, no, no. No. When you say a "new analysis" --

Q You just updated it?

A Updated it, correct.

Q Did you do a brand-new computation each time?

A Not necessarily physically making computations, no.

If I saw no variables of any significance, that's --

Q Did you preserve your notes from each time you did a computation analysis?

A No, I did not.

Q You threw your notes out?

A That's right.

Q So, in effect, each time you did a new analysis or new computation, you had to start from scratch; right?

A Not necessarily. When you are living a credit like that, you tend to retain what you are doing.

Q So it was based on your recollection of what you had done the last time?

A Recollection and the credit files and the material. I could have went in two minutes and picked out every company I was dealing with.

Q Really? In two minutes?

A Theoretically, in those times, yes.

Q I believe you also testified on direct that you performed a credit check each time there was a new issuer or an existing issuer who would issue new commerical paper; is that correct?

A With banks, yes.

Q With banks? I don't understand.

A Please restate the question. Maybe I misinterpreted it.

Q I believe it was your testimony on direct examination that you performed a credit check, a new credit investigation each time either a new issuer came into Goldman, Sachs or an existing issuer issued additional commercial paper; is that correct?

A We had an ongoing credit investigation as well as an initial credit investigation, yes.

Q Did you add anything to your credit investigation, supplement it in any way when the Penn Central outstandings were increased from $100 million to $150 million?

A I'm certain I contracted that figure into my calculations. It was one of the deductions from those assets.

Q You contracted what figure?

A The increase from 100 to 150 million.

THE COURT: Are you saying you did not have to make a new investigation, you just had to ask yourself whether the old investigation still revealed that 150 could be met rather than 100?

THE WITNESS: That's correct, your Honor.

Q And you were satisfied that the old computation was adequate for that?

A As updated, yes.

Q What about with respect to the increase from 150 million to 200 million?

A Same situation would prevail.

Q The past analysis was adequate once again?

A As updated, yes.

Q So there was no special, additional computations made at the time of those two increases?

A No. Just computations.

Q I believe you also indicated yesterday you didn't recall Mr.Wilson asking you for any assistance or opinion in connection with his opinion as to Penn Central?

A What opinions are we referring to?

Q Yesterday we were discussing Mr. Wilson's opinion to Goldman Sachs about the advisability of increasing the outstandings, and you indicated, I believe, on cross-examination yesterday, that you have no recollection of having given Mr. Wilson a credit evaluation at the time of that opinion; is that correct?

A I don't know what opinion you are referring to, but Mr. Wilson was aware at all times of my credit evaluation of Penn Central.

Q So he wouldn't have had to check with you?

A Excuse me? He may very well have asked me. I just don't recall.

Q That conversation wasn't reduced to writing in a memo or anything like that?

A I would seriously doubt it would be.

THE COURT: You say he was aware at all times of your analysis of Penn Central's credit. How? What was your routine for advising Mr. Wilson of your views?

THE WITNESS: Well, if anything came to my attention, your Honor, anything, that would lead me to believe that Penn Central or any other issuer was not creditworthy or there was some doubt in my mind, in the creditworthy context, that whatever notes we had, either in inventory or if we were going to be buying additional notes, were not going to be paid at maturity, I'd be into Wilson's office that instance.

THE COURT: Can you remember any situation in which that occurred?

THE WITNESS: In terms of creditworthiness, yes; as I mentioned yesterday, a number of cases where we stopped -- I think once in Penn Central we actually stopped seeling papers until we got additional information.

THE COURT: When was that?

THE WITNESS: Sometime in the spring, I gather.

THE COURT: 1970?

THE WITNESS: '70, yes.

THE COURT: What about other companies?

THE WITNESS: Other companies, yes.

Q Mr. Vogel, I got confused yesterday during your discussion of your calculations.

Did you use total indebtedness or was it total encumbrances as an offset against the total assets of Penn Central?

A Did I use total indebtedness?

Q You made reference yesterday to terms like total indebtedness or total encumbrances as an offset against the total assets of Penn Central.

A What I took was the assets, the various assets that I had indicated. Against those assets, if they were pledged to support indebtedness, for example, I took all of the Pennsylvania Company indebtedness, all of it, and reduced the Pennsylvania Company individual asset values by the amount of that indebtedness.

To the extent that I -- in the case of, for example, Pittsburgh & Lake Erie, there were a couple of small debt issues. When they acquired some additional shares, and those shares were pledged, I reduced it by that indebtedness.

THE COURT: You are trying to tell us that you are clear, I suppose -- I mean, it's obvious that debt does have to be deducted, doesn't it?

THE WITNESS: Yes.

Q How did you go about determining the specific existence of these encumbrances?

A They were -- for example, in the prospectus on December 9th there was indications in the footnotes as to encumbrances to various items.

I reviewed the description of the various debt instruments of Penn Central in Moody's Transportation Manual, several times, to cover anything that was appearing in there. In Moody's Transportation Manual, for example, they listed the unencumbered assets at one time.

Q For each specific asset of Penn Central; correct?

A Each asset of any consequence, yes.

Q So you made that determination of encumbrances item by item; is that correct?

A In terms of the companies I used, yes.

Q How many times did you make this investigation as to the encumbrances?

A After the first time, most of the debt that was being incurred was essentially the type of debt that I was aware of and had the agreements in connection therewith.

Q Isn't it a fact, Mr. Vogel, that the primary document you used for purposes of the existence of encumbrances was the December 10, 1969 debenture --

A No, it was not.

THE COURT: December 10th what?

MR. ATLAS: 1969 debenture offering circular.

Q You said it was not?

A It was not.

Q During the time Goldman Sachs was selling the Penn Central commercial paper, did you ever have any doubt as to the creditworthiness of Penn Central?

A Absolutely none whatsoever.

THE COURT: I thought you said awhile back that there was a time in the spring of 1970. Had you stopped by then?

THE WITNESS: I didn't have a doubt as to the creditworthiness. There were some words mentioned, like "staggering," and we wanted to get an explanation of that.

After we got the explanation, we were totally convinced it was still creditworthy.

Q The discussion or the statement by Mr. -- or one of the Penn Central officials, that the losses were staggering was not --

A I have forgotten the context. I'm just telling you I wanted to get what we thought was additional information at that point.

Q For the entire period of time Goldman Sachs was selling Penn Central commercial paper you never had a doubt as to the creditworthiness of Penn Central; is that correct?

A That's correct.

MR. MANEY: I renew the objection to anything after March 13, 1970.

THE COURT: In this particular case, I think the answer may strengthen your position.

MR. ATLAS: May I be allowed to inquire just a little further along this line?

THE COURT: Yes.

Q Mr. Vogel, isn't it a fact that on April 14, 1970, Mr. Wilson recommended to Mr. Levy that Goldman, Sachs stop selling the Penn Central commercial paper?

A At one point of time I think he did.

Q Wasn't that on April 14, 1970?

A If you say so.

THE COURT: His recollection --

Q You don't recall?

A If you say so.

THE COURT: He doesn't remember the day, obviously. If there is no dispute about it, let's proceed as if it were -- dispute about the date --

MR. ATLAS: Do you agree?

MR. MANEY: I believe there were exhibits admitted into evidence over our objection, because they deal with post-transactions evidence, but those exhibits are in, I believe.

THE COURT: I'm sure there is something in the record on that point, anyhow.

MR. MANEY: Your Honor, Plaintiff's Exhibits 16 and 16 were admitted by the Court for limited purposes. To that extent, it's not a matter of dispute.

THE COURT: All right.

Q Mr. Vogel, I'd like to show you Plaintiff's Exhibit 15.

MR. ATLAS: Your Honor, you will excuse the underlinings on that.

Q Have you finished reading that, Mr. Vogel?

A Yes.

Q Does that refresh your recollection on April 14, 1970 Mr. Wilson recommended to Mr. Levy that Goldman Sachs terminate their sale of commercial paper of Penn Central?

MR. MANEY: Objection, your Honor; the form of the question.

THE COURT: That he made a recommendation in terms -- I think you'd better stick to the terms of the memo. I take it that's Mr. Maney's objection, the basis of his objection.

Does it refresh your recollection that Mr. Wilson recommended to Mr. Levy that "immediately stop offering the notes of Penn Central Transportation until we had an in-depth discussion"?

THE WITNESS: Yes.

Q It does refresh your recollection?

A Yes.

Q Did you agree with that -- I'm sorry -- did you agree with Mr. Wilson's position?

MR. MANEY: I object.

THE COURT: Sustained. This is a month later. I'm not interested in whether he --

MR. ATLAS: As an offer of proof I'd like to establish -- I'd like to ascertain whether Mr. Vogel at that time, when Mr. Wilson made that recommendation, still felt that Penn Central was creditworthy. I think it will reflect upon his judgment at all points in time.

THE COURT: It will reflect on his judgment. His judgment isn't of legal consequence.

MR. ATLAS: I do think it would be probative of Mr. Vogel's understanding.

THE COURT: I understood him to have said earlier that at no time -- or, in answer to your question whether at any time during the period in which the notes were sold, did he have any doubt about Penn Central's creditworthiness, and he said, "Absolutely not."

Q That would include April 14, 1970?

A Yes, sir.

Q Were there any other occasions during the period we're talking about through the first quarter of 1970 when you disagreed with Mr. Wilson's view as to Penn Central?

A Disagree with his view as to Penn Central, in what context?

Q Did you and Mr. Wilson, during 1969, the first quarter of 1970, have any disagreements as to the creditworthiness of Penn Central?

A No.

Q Have any disagreements as to whether or not Goldman Sachs should continue selling Penn Central commercial paper?

A If we had no disagreements about the creditworthiness, then there would be no disagreement in terms of whether we should --

THE COURT: That doesn't necessarily follow.

In any event, if you would just say "no," if that is the answer, say it.

A No.

Q Is it your testimony that on April 14, 1970 is the first instance of a disparity between your views and Mr. Wilson's views?

MR. MANEY: Objection.

THE COURT: He didn't say -- let's find out.

Did you agree with the suggestion that you should stop offering the notes until you had in-depth discussions with the officers?

THE WITNESS: That was his decision, your Honor.

THE COURT: I said, did you?

THE WITNESS: I didn't disagree with it. He was the decision-maker.

Q You agreed with that?

A I didn't disagree with it.

THE COURT: I take it you didn't really agree or disagree?

THE WITNESS: Right. I had no feeling at that point. That was his decision.

Q You had no feeling at all at that point in time?

THE COURT: I'm not going to go into his feelings. You didn't have to do anything one way or the other; is that right?

THE WITNESS: No, I did not. It was not my decision to make.

Q At any point in time, Mr. Vogel, during 1969 or the first quarter of 1970, did you ever attempt to go beyond the statements made to you by Mr. O'Herron and Mr. Bevan as to their accuracy?

A Attempt to go beyond?

Q Beyond the statements they made to you.

A What statements are you referring to?

Q Whatever statements they made to Goldman, Sachs, whatever statements that related to the creditworthiness of Penn Central.

A For example, they told us they were arranging bridge loans, and they sent us the document.

Is that what you are referring to?

Q Is that your testimony?

A Well, I'm saying that the statements we made -- you asked me if I went beyond. We got the document.

Q You requested the documents?

A Right.

Q Now, as I understand Plaintiff's Exhibit 33, which is contained in the booklet you have in front of you --

Would you take a look at that?

THE COURT: Is it part of Plaintiff's Exhibit 75?

A Is this the blue book you are referring to?

Q The accumulation of blue sheets that Mr. Maney prepared.

THE COURT: In this one, 33? What's the date of it?

MR. ATLAS: I believe it's October 22, 1969, your Honor, Plaintiff's Exhibit 33.

THE COURT: All right. It's the short one.

Q Have you looked at that?

A Yes.

Q It's a fact that Mr. O'Herron made that prediction at that time; is that correct?

A Yes.

Q And predicted that the fourth quarter of 1969 would be in the black?

THE COURT: This only shows that Mr. Wilson says so.

Do you know whether he made that prediction? Maybe you do.

THE WITNESS: I'm sure I read the blue sheet.

THE COURT: That's all you would know about it?

THE WITNESS: That's correct.

THE COURT: I'm reading the blue sheet now, too.

Q You read all the blue sheets at the time; correct?

A Yes, that's correct.

Q You thought highly of Mr. O'Herron; is that correct?

A Yes, I did.

Q Based upon your meeting with him on September 3, 1969?

A Yes.

(Continued on next page)

Q And your subsequent relationship with him; correct?

A Yes.

Q Now, you did learn on February 5, 1970, that there was approximately a $16 million loss for the fourth quarter of 1969; isn't that correct?

A I believe we were aware of a fourth-quarter loss.

Q You learned about that on February 5, 1970?

A Thereabouts, yes.

Q Did you give any thought to reevaluating your opinion about Mr. O'Herron?

A At that time?

Q Yes.

A Very common. In terms of making projections, we asked what happened and he explained it to us. We were satisfied with the explanation.

THE COURT: Do you recall what the explanation was?

THE WITNESS: I think it had to do with a wicked winter, a lot of snow removal from tracks, accounting adjustments. There were a number of explanations.

Q In connection with your credit investigation of Penn Central, did Goldman Sachs make any effort to review the documents on file with the ICC?

A Would you repeat?

Q Were there documents on file with the ICC relating to Penn Central?

THE COURT: At what time?

Q At any point during your credit investigation of Penn Central during 1969 or the first quarter of 1970.

A We reviewed the ICC applications for the commercial paper approval, and also the ICC approval.

Q Other than the documents that Penn Central gave you, did you review any other public documents that were on file with the ICC?

A Just that ICC-type of accounting statements that appeared in Moody's Transportation Manual, yes.

Q Nothing else?

A No, nothing directly from the ICC.

THE COURT: You didn't go to the ICC to look at its files?

THE WITNESS: No, I did not.

Q The evaluation you made, where you took the net value less the needs and liens and encumbrances and indebtedness you referred to earlier, was that ever reduced to writing?

A The calculations, yes, but not the total.

Q Not the total?

A No.

Q How often did you calculate the net value of these assets?

A You mean make the calculation physically? Frequently.

Q Weekly?

A I don't say weekly.

Q Monthly?

A As new additional data came to my attention that related to it, that is when I would do it.

Q Mr. Vogel, if you had known in February of 1970 that Penn Central had budgeted for a $60 million loss in the first quarter of 1970, would you have felt different about Penn Central's creditworthiness?

A No, I wouldn't.

Q You wouldn't have felt differently?

A No.

Q Even though they told you that their prediction for 1970 was a $56 million loss for the whole year?

A As I have indicated earlier, the margin for that kind of earnings problem in the context of my study of asset availability, there was ample margin to take care of that and even greater losses.

Q What is meant by the term "credit control"?

A Credit control?

Q Yes.

A You will have to explain that one to me.

Q You never heard that term?

A You tell me what it is.

Q Have you ever heard that term?

A Credit control?

Q Yes.

A I have heard all kinds of controls. That might be one of them.

I don't know in what context you are asking me about it.

Q In connection with maintaining a credit relationship with an issuer such as Penn Central, have you ever heard that term used?

A In connection with Penn Central, no.

Q Did you ever hear Mr. Van Cleave use that term?

A He may have. I don't recall.

Q You don't recall?

A No.

Q You don't recall Mr. Wilson using that term?

A He may have. I don't recall.

Q If you were asked to do a credit check on a company such as Penn Central, would it normally take six to eight months?

A If I was asked to do a credit check and I had all the information in front of me, no.

Q Wouldn't a credit check involve accumulating the information?

A That's correct.

Q So how long would it take?

A If you come in to me today and say, "We want to start issuing three days from now for Penn Central," it wouldn't take six months. I would have to make a determination on what was available then in the next three days.

Q So, regardless of whether you could actually do it in three days --

A I didn't say that. If I couldn't do it in three days and it would take six to eight months, it would take six to eight months.

Q What is the normal time?

A There is no such thing.

Q Could you do it in three days on a company the size of Penn Central?

A It depends.

Q On what?

A Supposing they have $10 million cash and they want to borrow 5, and they are going to have 10 million to pay it off. It is not going to take me six months.

Q If a company such as Penn Central came to you today and said, "We want to issue $200 million in commercial paper through you as dealer," how long would it take you to do a credit check?

A If they supplied me with all the data?

Q No. They just walked in to you.

A I can't give that to you.

Q It certainly wouldn't be a very quick thing, would it?

A It would take just as long as I felt as a professional credit man, and with such as much information I needed as a professional credit man, it would take as long as I needed to appraise that credit information to determine whether it was creditworthy. Whether that would be a week or month, I can't say.

Q You certainly wouldn't allow them to pass muster, so to speak, in terms of creditworthiness, without a thorough check; correct?

A Exactly.

Q If someone had asked you to do a credit check on Penn Central on February 8, 1970, after the 1969 earnings were announced, how long would it have taken you?

THE COURT: I thought he just finished saying he could never tell how long it will take to do a credit check. The impression I got is it is not possible to answer that question with any more precision than for a lawyer to answer how long it will take him to render an opinion on something. There are too many variables.

Q On February 8, 1970, after the information had been disclosed about Penn Central concerning the 1969 results, could you --

THE COURT: Are you asking him how long it would have taken him to do a credit check, assuming the facts that then existed with relation to the facts he knew?

MR. ATLAS: Yes, at that time.

Q And they came to you on February 8th and they wanted you to be the dealer for their commercial paper, $200 million worth outstanding --

THE COURT: I don't understand. Isn't that exactly what existed?

MR. MANEY: I object.

THE COURT: If you want to ask him how long it would have taken him -- I am not sure what you are driving at.

Are you asking how long it would have taken him to get the information he needed as the actual dealer for

Penn Central at the time, or are you asking a hypothetical about somebody who is starting out from scratch?

MR. ATLAS: I am asking a hypothetical about somebody starting out from scratch on February 8, 1970.

THE COURT: He already answered that he couldn't tell you how long it would take.

Q Is that your testimony?

A That's correct.

MR. ATLAS: Your Honor, may I just have a brief moment?

THE COURT: Sure.

(Pause)

Q I hope this will be the last question, Mr. Vogel.

Did you indicate a figure for the total assets of Penn Central on direct examination?

THE COURT: As of what date?

MR. ATLAS: During the period of time he was maintaining his credit rating.

THE COURT: The value of assets is as of the moment.

Q As of the end of October, 1969?

A I don't recall exactly what they were at the end of October, 1969. They were in the neighborhood of 6 billion on a calendar basis.

Q 6 billion.

THE COURT: Is that net?

THE WITNESS: That's gross.

THE COURT: That's the entire corporate complex?

THE WITNESS: Yes, the entire complex.

Q Mr. Vogel, I would like to show you Plaintiff's Exhibit 67 and ask you if you have ever seen that before.

A I don't recall the specific document. I may have seen it.

Q You don't recall seeing the document?

A I don't recall. I may have.

Q It wouldn't refresh your recollection if I indicated this was a document that was on file with the ICC?

A It's entirely possible. That's what it says.

Q It is a document prepared by Mr. O'Herron as indicated on the face of the document; is that correct?

THE COURT: How does he know?

MR. ATLAS: Look at Page 4.

THE COURT: How does he know? I can see that, too.

MR. ATLAS: It would appear to be.

THE COURT: In that regard, it speaks for itself.

MR. ATLAS: Correct.

Q Would you have been surprised to learn, if you had read this document on October 1, 1969, that in Mr. O'Herron's opinion Penn Central's assets totaled 4.5 billion, on the third line of Page 3?

A No. He was referring to the transportation company alone figure. I was referring to the total complex.

Q But wasn't Mr. O'Herron's figure a more accurate figure in terms of what was available as assets for commercial paper?

A Just for the railroad in terms of its application. It had nothing to do in terms of what was available.

Q The railroad was issuing the paper; isn't that right?

A Yes. The railroad also had additional investments in the subsidiaries that raised the total to 6 billion.

MR. ATLAS: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. MANEY:

Q Mr. Vogel, do you recall yesterday being asked a question about the Hope diamond?

THE COURT: About what?

MR. MANEY: About the Hope diamond.

A It came up, yes, sir.

Q If you had some crown jewels, including the Hope diamond, and you had to get some cash to pay your bills tomorrow, and you couldn't sell the Hope diamond, how would you raise the cash?

A Borrow against it.

Q Go to a pawnbroker?

A Or anyone else.

THE COURT: The person that talked about the Hope diamond yesterday also talked about mortgaging assets, but I am glad to be reminded. Sometimes you can get money, too, just by waving the Hope dimaond in front of other people's faces without mortgaging it.

THE WITNESS: I suspect it happened, your Honor.

MR. MANEY: Something like a million pound note?

THE COURT: Exactly.

Q Do you know, with respect to Mr. Cox, whose name came up this morning, do you know whether Mr. Cox was an employee of Penn Central?

A I can't speak definitively.

Q Do you know if Mr. Cox was a member of the Washington law firm of Covington & Burling?

A No.

Q Do you know if Mr. Cox made the statement reported in the blue sheet?

A No, I do not.

Q Do you know if it was made at a rate increase hearing?

A No, I do not.

THE COURT: I don't understand the reference to Mr. Cox has been put before me for proving whether it was true or not but what the response was.

MR. ATLAS: I am sorry, your Honor.

THE COURT: Mr. Maney seems to be trying to limit the impact of Mr. Cox' statement by pointing out that he was a member of Covington & Burling and made it at an ICC hearing or something like that.

I said the reason you referred to Mr. Cox' statement was not to prove whether it was true, but what the response to it was.

MR. ATLAS: Correct, your Honor.

Q With respect to whether the $56 million reported in the blue sheet -- do you still have the blue sheets in front of you, Mr. Vogel?

THE COURT: The collected works, you mean?

MR. MANEY: Yes.

Q I am referring to Plaintiff's Exhibit 12, the February 6th blue sheet by Mr. Wilson.

A Yes.

Q $56 million was a railroad figure, was it not,

$56 million loss?

A Loss on operations, yes.

Q What was the projection for consolidated Penn Central?

A They projected a profit of $25 million, I believe.

THE COURT: Is that shown in the blue sheet? The reference is made in the blue sheet?

MR. MANEY: Yes, your Honor. February 6, 1970, the sentence starting the eighth line from the top beginning, "Assuming there is a $56 million loss in the railroad for 1970."

THE COURT: Right. Okay.

Q Mr. Vogel, in the context of a projected consolidated profit of 20 to 25 million, and with a railroad operating loss, how did you view that in the perspective of the railroad's prior performance?

A By and large, the non-railroad operations over the years were really the profit-makers.

Q Do you know what the trend was in that respect?

A Excuse me. You will have to repeat.

Q I show you Exhibit H in evidence, showing the comparative results for 1968 and 1967. I show you Exhibit A-182 in evidence, showing the results for 1969.

In relation to the results for '67, '68 and '69 on a consolidated basis, did the projection reported in the February 6, 1970 blue sheet indicate a deterioration or improvement?

A An improvement.

THE COURT: I want to be sure that the blue sheet, PX 12, when it refers to a $20 million profit for the Penn Central holding company, is that consolidated?

THE WITNESS: Yes, that is consolidated.

THE COURT: It means the system as a whole?

THE WITNESS: As a whole.

Q Do you know what the assets of Penn Central Company, the holding company, were, company only, at this time?

A The holding company?

Q Yes.

A To my knowledge --

MR. ATLAS: Objection. I don't see what the relevance is. We are talking about Penn Central Transportation.

THE COURT: No, I can't agree withthis theory of yours that it is per se an impossibility for the companies to lend each other money back and forth, or to back each other's situation. We are talking about a 100 percent-owned company.

I don't mean that it's controlling, but at least it is relevant.

A Penn Central holding company owned the Penn Central Transportation Company, which in turn owned Pennsylvania Company and other subsidiaries.

Q What assets did Penn Central Company have other than the stock of Penn Central Transportation Company?

A Very little, if any, to my knowledge.

Q I believe you covered this briefly on your direct testimony, but with respect to his Honor's question, do you remember how the proceeds of the Pennsylvania Company's $50 million debenture offering in December 1969 were used?

A They were lent upstream to the railroad, Penn Central Transportation Company.

Q And you referred to a bridge loan earlier; do you remember that?

A Yes.

Q To what was the bridge loan made?

A Pennsylvania Company.

Q Do you know where those funds went?

A They were intended to be made available to the railroad, Penn Central Transportation Company.

Q You testified briefly yesterday with reference to other issuers or potential issuers who were turned down or discontinued by Goldman Sachs.

A Yes.

Q I think you mentioned General Cigar as one.

A Yes.

Q Can you think of any companies that were issuing paper through Goldman Sachs --

MR. ATLAS: Objection. It is beyond the scope of cross-examination. He is rehabilitating direct.

THE COURT: I think I asked questions during the course of your cross-examination on this. I think you also raised the question of whether as a result of a negative credit conclusion -- let's put it that way -- Mr. Vogel ever took any action.

Q I am limiting myself to the period 1968, '69 and the first quarter of 1970.

Did you discontinue handling commercial paper of an existing issuer for credit reasons?

A Yes.

Q Can you name some of those companies?

A General Dynamics was one; then there was a company, American Acceptance. It was a finance company. Diners Club, the credit card company.

Those come to mind.

MR. MANEY: No further questions.

RECROSS-EXAMINATION

BY MR. ATLAS:

Q Mr. Vo[illegible]ou made a reference to Plaintiff's Exhibit 12, the February 6, 1970 luncheon meeting where Mr. O'Herron and Mr. Bevan had predicted a $25 million profit for the holding company; is that correct?

A Yes, sir.

Q Is that the same Mr. O'Herron who predicted the fourth quarter of 1969 would be in the black? Is that correct?

THE COURT: It is the same Mr. O'Herron, whatever he predicted?

THE WITNESS: Yes.

Q He did predict the fourth quarter of 1969 would be in the black?

A That's entirely possible, yes.

Q Didn't you just testify to that about fifteen minutes ago?

A He did not predict it directly to me. All I am saying is to the extent from the report --

Q As far as you know, he did?

A Yes.

MR. MANEY: Objection, your Honor. The blue sheet speaks for itself, and quite clearly does not refer to Mr. O'Herron.

THE COURT: All right. I am not taking Mr. Vogel's statements as validating anything that he wasn't a personal witness to.

MR. ATLAS: It does specifically refer to Mr. O'Herron.

THE COURT: Where? We ought to be able to settle this.

MR. ATLAS: The October 22, 1969 blue sheet refers to Mr. O'Herron's prediction for a fourth quarter in the black.

MR. MANEY: I think the record will be quite clear that the February 6th prediction referred to Mr. Bevan.

Q Mr. Bevan and Mr. O'Herron were at the February 6th meeting?

THE COURT: Don't ask him. He doesn't know any more than [illegible] do.

Here is the blue sheet in front of him. If you want to, ask a direct question.

Mr. O'Herron had made certain predictions in the past, or the company had made certain predictions in the past that didn't seem to hold up.

Did that impair your confidence at all in this statement here of February 6th?

THE WITNESS: No, it did not.

THE COURT: Why didn't it?

THE WITNESS: Because it is not unusual, when people talk in terms of earnings, you are talking ahead of time. It's extremely difficult to predict with any degree of accuracy.

THE COURT: There comes a time, though, if someone went on mispredicting, you would lose confidence.

THE WITNESS: Clearly.

Q On redirect, you were talking about the assets of the holding company?

A Yes, sir.

Q Did the holding company go into bankruptcy?

A I am not certain whether it has or hasn't.

Q Just the railroad went into bankruptcy, is that right, Mr. Vogel?

A Penn Central Transportation, yes.

Q Mr. Maney asked you about the December 1969 debenture offering when the money was lent upstream to the railroad company; is that correct?

A Yes, Penn Central Transportation Company; yes, sir.

Q That money that was lent upstream was used to purchase $16 million back of the Goldman Sachs inventory, wasn't it?

A If you say so.

MR. ATLAS: No further questions, your Honor.

THE COURT: Thank you, Mr. Vogel.

(Witness excused)

MR. MANEY: Does your Honor want to take a mid-morning break now?

THE COURT: That will be fine with me. I know you have a witness you want to get out, but I would like a short recess.

(Recess)

(Continued on next page)

CERTIFICATE OF SERVICE

Service of a copy of the annexed appendix was made upon Solin & Breindel, attorneys for Plaintiff-Appellee by delivering same to their offices at 645 Fifth Avenue, Suite 400, New York, N.Y. 10022.

George A. Scholze

George A. Scholze
48 Wall Street
New York, N.Y. 10005
(212) 952-8100